UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 24 Cr. 91 (GHW)

VADIM WOLFSON and GANNON BOND,

Defendants.

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New York, N.Y.
June 3, 2025
10:00 a.m.

Before:

HON. GREGORY H. WOODS,

District Judge

APPEARANCES

JAY CLAYTON
United States Attorney for the
Southern District of New York
EMILY S. DEININGER
DAVID R. FELTON
ALEXANDRA ROTHMAN
Assistant United States Attorneys

K&L GATES, LLP
Attorneys for Defendant Wolfson
DAVID RYBICKI
ROBERT SILVERBLATT
MICHAEL HARPER
ANNA L'HOMMEDIEU

JAMES KOUSOUROS
Attorney for Defendant Bond

MS. DEININGER: Good morning, your Honor. Emily Deininger on behalf of the government. I am joined at counsel table by my colleagues, David Felton and Alexandra Rothman, and two paralegals from our office, Angelica Cotto and Connor O'Rourke.

THE COURT: Thank you.

MR. RYBICKI: Good morning, your Honor. David Rybicki for Vadim Wolfson. I am joined by my colleagues, Rob Silverblatt, Michael Harper, and Anna L'Hommedieu.

THE COURT: Good. Thank you.

MR. KOUSOUROS: Good morning, sir. James Kousouros. I am here on behalf of Gannon Bond with our paralegal, Emma Cole. Mr. Bond is present and seated to our left.

THE COURT: Thank you. First, thank you all for being here. We have an extended agenda for topics for discussion during the course of today's proceeding. Let me begin with an overview of the topics that I would like to touch on during the course of today's conference. Please let me know if there is anything else that you would like for me to add to the agenda. Again, it's comprehensive, I hope, but I am happy to hear from you if there is anything that you would like me to add.

Let me tell you what I hope to cover today. First we need to talk about scheduling issues. Then I want to spend some time talking about trial logistics. We will talk about the jury selection process, my process with respect to jury

charges and the charging process. I want to give you some instructions about trial practice generally. I want to talk about your witnesses and exhibits. I want to discuss the pending motions in limine. We have the bail review hearing with respect to Mr. Bond. We also need to take up the Brady issues.

With respect to the motions in limine, just a brief note. I expect to engage in some argument regarding those issues. That, I expect, will take some substantial portion of today's conference as we engage in a discussion to the extent needed of those motions and as I provide the parties with my views regarding them. My proposal at this point is to take up the decisions on the motions in limine last. I will leave it to the defendants and your counsel to let me know if you would like to excuse the individual defendants for that portion of the proceeding since I expect that it will be purely legal in nature. If the defendants wanted to make an application to that effect, I would be happy to entertain it. So that's my agenda for today's conference.

Counsel, is there anything that any of you would like to add to that agenda before we proceed? First, counsel for the government.

MS. DEININGER: Your Honor, I think at some point we just wanted to put on the record where the status of plea discussions was. We can do that now or at a later time of your

liking.

THE COURT: Thank you. Fine.

Counsel for each defendant. First, counsel for Mr. Wolfson.

MR. RYBICKI: Yes, your Honor. Our assumption is that the scheduling portion of the agenda will address the flagrant disregard hearing in addition to trial adjournment.

THE COURT: Thank you. Yes.

Counsel for Mr. Bond.

MR. KOUSOUROS: Thank you, your Honor. James Kousouros. The only outstanding issue, and I think that that will be subsumed by your agenda, but we have Rule 15 depositions that were taken, so we will also need to establish a schedule for motions concerning the designations that the parties have made.

THE COURT: Good. Thank you. I appreciate that.

So I will take up the question of scheduling for the suppression hearing. That's part of my agenda. I do want to talk about deposition designations, counter-designations, and the like. That was not on my agenda, so I will take that up when we talk about the parties' witnesses.

Let me hear from counsel for the government if there is anything that you would like to put on the record regarding the status of any discussions before we proceed.

MS. DEININGER: You are referencing plea discussions,

your Honor; is that correct?

THE COURT: I am referring to your comment.

MS. DEININGER: OK. Yes. So we have had some discussions with defense counsel. There have been -- we want to put on the record that there have been no plea offers formally extended. Earlier last month, on May 8, 2025, we did send out *Pimentel* letters to both attorneys -- sorry, to both defendants that set out the government's position as to what their sentencing guidelines range would be, but there have been no plea offers submitted.

We just wanted to confirm on the record that the defendants have received those *Pimentel* letters and have discussed them with their counsel.

THE COURT: OK. Counsel for each of the defendants, any response?

I just note that discussions regarding pleas are entirely matters for the parties, not the Court. I take no position regarding whether and the extent to which the parties wish to engage in plea discussions and whether parties wish to reach one. That's outside of my province. But counsel for the United States has asked that each of the defendant's counsel confirm that they have received those letters. I will hear from each of the defendant's lawyers if you have a response that you would like to volunteer. Counsel.

MR. RYBICKI: Yes, your Honor. Mr. Wolfson's counsel

has received the letter and we have discussed it with Mr. Wolfson.

THE COURT: Thank you.

Counsel for Mr. Bond.

MR. KOUSOUROS: Likewise, your Honor. We have received the government's letter and discussed it with our client.

THE COURT: Very good. Thank you. So with that, let's begin.

So I think the principal thing that we need to discuss are scheduling matters. There are two things that we need to talk about: First, suppression hearing regarding the issue of assertive flagrant disregard of the requirements of the warrants. That was the subject of the parties' earlier correspondence and my order earlier or, I should say, late last month.

I have received the parties' May 30 letter with respect to the scheduling of an evidentiary hearing on the issue of whether the government flagrantly disregarded the terms of certain search warrants in the case, which is at Docket No. 201. I understand that the parties are jointly requesting that I conduct the hearing during the week of June 9, so I am happy to do that.

I will be happy to schedule a hearing during the course of that week. I am on trial that week in a civil case.

As a result, my inclination is to propose that we conduct it on Friday of that week. That would be the least disruptive for my trial because it will allow me to simply tell those parties that I am not going to sit at trial on the Friday. So that's my proposal with respect to scheduling that hearing.

Let me hear from the parties. What do you think? Does that work for you?

MS. DEININGER: Your Honor, we obviously want to accommodate the Court's schedule, but unfortunately one of the witnesses that we think would need to testify at this hearing is not available on Thursday or Friday of next week, as we put out in our May 30 letter. So if earlier in the week does not work, I think, as we said in our letter, we would request that it be scheduled instead for the week of June 16, when trial was going to begin, and we do know that all the parties and witnesses will be available.

THE COURT: Thank you. I can accommodate that. Assuming that we are going to need to adjourn the trial itself, that week is free. I would propose that we do it as promptly as practicable, which would put us on the 16th.

Counsel for the government, does that work for you?

MS. DEININGER: That does work for us.

THE COURT: Thank you.

Counsel for each of the defendants?

MR. RYBICKI: Yes, your Honor.

THE COURT: Thank you.

Counsel?

MR. KOUSOUROS: Yes, sir.

THE COURT: Very good. So we are going to conduct a suppression hearing with respect to the issue of alleged flagrant disregard on the 16th of June. Thank you, counsel, for working to work that through. If my other trial is not completed by that date, I will do the same thing. I will just tell them that we will have to adjourn a day and start up on Tuesday.

Go ahead, counsel for the government.

MS. DEININGER: I just wanted to note in the context of this that as we are preparing for this evidentiary hearing, the government is also doing a comprehensive review of its compliance with other search warrants in the case, and we expect to be able to provide information to the Court about that in advance of the hearing.

THE COURT: Thank you. Let me just ask, can you expand on that? Is there concern that the government is following up on?

MS. DEININGER: We are -- in light of the issues that have been raised, we just -- we are double-checking our compliance with everything. We do believe -- we are looking into issues regarding whether, among other things, whether there was production of accounts without responsive sets.

THE COURT: Thank you.

What do you mean by that?

MS. DEININGER: That there were certain e-mail accounts that were obtained pursuant to search warrants that were produced but for which a subset of responsive materials was not specifically identified and produced.

THE COURT: Thank you. So I appreciate the government's diligence in checking on that. I very much appreciate that the government is working conscientiously to audit its work, and I applaud those efforts.

Let me ask, counsel for the government, to what extent does that affect the schedule that I have just set regarding this issue?

So to the extent that that's a process that's ongoing, I want to be mindful of the prospect that the defendants will have other issues that they want to raise with the Court with respect to those issues that may affect how we proceed with this upcoming conference. Any views?

MS. ROTHMAN: Your Honor, good morning. This is my first time appearing in this case, but it's nice to see your Honor again. I can provide a little bit of context as I have, sort of, been taking the lead in reviewing some of the government's prior search warrants that it obtained and reviewed in this case.

So to answer the Court's question, how does this

comprehensive review affect scheduling, I think our intention is to present a fulsome picture of how search warrants were reviewed by various individuals, some of whom were involved, in fact, most of whom were involved in the review of the 2024 devices. So as part of our presentation to the Court as to how that review was conducted, we think it's helpful to provide the Court with broader information about more general review practices.

Candidly, having additional time to make sure that we are as fulsome as possible with the Court would be helpful. I think the date of June 16 is feasible for us to have all of the information to the Court and to defense counsel. We have made some promises in our letter about date for the production of exhibits and 3500 material. We can comply with that. We do want to do a fulsome review and make sure the Court has all the information. And so that does take some time, but we can accommodate the Court's request to proceed on the 16th of June.

THE COURT: Thank you. I appreciate that. Thank you, counsel.

I want to make sure that now that we are doing this hearing, that it is productive and efficient. The parties know that that entire week is free. My inclination, this being a criminal case, is to proceed with expedition, but from my perspective, if we do it on the Monday versus the Friday, if that would make it better for the parties to be able to present

their evidence to the Court in an efficient way, the days don't make a difference for me. So if the parties wanted to suggest that I do it on the following Friday, I would certainly consider and probably approve that request, but I would want to hear the parties' views.

So counsel for the government, what's your view? Should I be looking at the 20th rather than the 16th? Would that make a difference?

MS. ROTHMAN: If the Court can accommodate the 20th, I think the government would appreciate a few additional days to make sure that our review is as fulsome as possible.

THE COURT: And would that change affect in any way the government's commitments to provide the materials in advance of the hearing to the defense?

MS. ROTHMAN: Your Honor, no. I think we would abide by the dates that we put forth in our letter. So that would be identifying witnesses, I believe it was a week in advance, and providing 3500 material five days in advance.

THE COURT: Thank you. Let me hear from --

MS. ROTHMAN: I'm sorry, your Honor; three days in advance.

THE COURT: Thank you.

Let me hear from each of the defendant's counsel about that proposed schedule, that is, scheduling the hearing for the 20th. Counsel for Mr. Wolfson.

MR. RYBICKI: Your Honor, we would appreciate, of course, as much lead time as we can to receive whatever audit or report the government is working on right now, and so we don't have an objection in principle to pushing the flagrant disregard hearing to the 20th.

I would add that there is also the question of the adjournment of the trial date.

THE COURT: Thank you. Yes, we will talk about that in just a moment.

Counsel for Mr. Bond.

MR. KOUSOUROS: Your Honor, we all have an abiding interest to make sure that this hearing is conducted on -- at that time and without any further delay, so I have no problem with the 20th.

What I would respectfully request, though, is that the government either agree or perhaps be directed to turn over these materials. We had asked for five days, and I think that given what we have heard today, that there is some additional audit that is transpiring that seems to go beyond, I think, if I heard it right, the parameters of the hearing being just that the warrants that are being challenged and the way that they were evaluated, I think that it would be appropriate for us to have those materials earlier than three days so that we can evaluate whether or not there are any issues concerning the admissibility of the presentation, the relevance of the

presentation. So that's my only issue. I have no other problem with the 20th.

THE COURT: Thank you.

Counsel for the government, can you give the defendants that information a little bit sooner, given the adjournment?

MS. DEININGER: Your Honor, I think we had already agreed to provide exhibits five days before. It's only 3500 that we were going to produce three days in advance.

THE COURT: Fine. Thank you.

MS. DEININGER: I expect we will be providing information to the Court more than -- regarding our findings more than three days in advance.

THE COURT: Very good. Thank you. Again, I appreciate the government's conscientious review of those materials. That work is important. And, again, thank you for doing it.

So the hearing with respect to the suppression motion will be held on the 20th of June.

Let's talk about the other issue that also affects scheduling. So there are two issues that affect scheduling here: One is the need for the Court to resolve this supplemental suppression motion regarding assertive flagrant disregard with the terms of those warrants. The other issue that I think affects scheduling for trial is the Brady issue

that was brought to the Court's attention on the 29th. The government submitted a response late last night, which I have read. So I would like to talk a little bit about how I can go about resolving those issues. So let me hear from the parties.

I will say a couple of words first to introduce the conversation. First, I have not seen the underlying materials, so I expect that I will need to see those materials in order to be able to evaluate whether they constitute *Brady* materials. At this point, I also only have letters from the parties containing the parties' proffers. I don't have what I will describe as facts. I accept and have no reason to discredit the parties' proffers regarding the underlying facts, but no party has presented affidavits that contain the facts upon which you would like me to rely on ruling on this set of issues.

So my questions for you relate to the process that I should engage in in order to resolve this dispute. In other words, can I resolve it on the basis of the parties' letters and your proffered facts? How do you want to get me the underlying materials so that I can make a determination with respect to whether they constitute Brady materials or not?

And that leads to the next procedural question, which is, how do we schedule a reply from the defense to the government's submission from last night?

Let me hear from each of the parties what you think.

I will start with counsel for Mr. Wolfson. What do you think about those procedural questions?

MR. RYBICKI: Your Honor, as a threshold matter, we would respectfully point out to the Court that we e-mailed chambers a copy of my declaration and the underlying Brady materials under seal.

THE COURT: Thank you.

MR. RYBICKI: So those materials are before the Court.

We have also reviewed the government's submission from last night, your Honor. And in terms of the factual analysis that we believe the Court should undertake here, we believe the letter creates more questions than it answers, candidly. There is very little factual basis for the Court to analyze, under the *U.S. v. Miranda* rubric, the issues of culpability and prejudice to Mr. Wolfson. The prejudice side of that analysis is something we believe is the province of the Court, however, the culpability side of that analysis, we do not believe there is a sufficient factual record for the Court to make a determination at this point.

We leave it to the discretion of the Court with respect to fact-gathering, whether that would entail a hearing or additional submissions from the government, but the unsupported representations made by the government in the letter we believe create numerous fact issues that the Court needs to explore in order to make a determination in terms of

the culpability portion of the analysis under *Miranda*.

THE COURT: Thank you.

Counsel for Mr. Bond, anything else before I turn to the United States?

MR. KOUSOUROS: No, your Honor. I agree that there is additional information that does need to be set forth.

THE COURT: Thank you.

Counsel for the government, how do you respond?

MS. DEININGER: Your Honor, my understanding going into this today is that there were not any disputes of fact regarding how the materials were received or produced that would require an evidentiary hearing.

THE COURT: Let me just pause you. I apologize. I don't know that the question now is whether or not there needs to be an evidentiary hearing. I think the question in the first instance -- and the defense, I am sure, will reserve their rights to request one. The first-level question is whether I can accept just on face value the proffers in the government's letter without a factual background through a declaration from one or more people involved.

MS. DEININGER: And I'm sorry. What I was getting to was that prior to hearing defense counsel speak, my understanding was that we did not have any disputes of fact, in which case I was going to submit that the proffered submissions were more than sufficient for your Honor to rule, especially

because our understanding is also that you have the underlying materials under seal.

I hear from defense counsel that they have factual questions. I think it would help if we had some clarity as to what those are because the government is certainly prepared to put in an affidavit that sets forth the facts proffered in our letter and is consistent with that. If there are other issues that an affidavit should address, it would be helpful to have some clarity on those in advance so that we can make sure we are adequately putting the necessary information in front of your Honor for a decision.

THE COURT: Fine. Let me propose this: I think I would like to give the parties the opportunity to talk about the issues that counsel for Defendant has just raised regarding the letter. It came to us relatively late in the evening last night, so I appreciate that the parties may not have had the opportunity to meet and confer to discuss it and the issues that the government has presented. So in other words, this may be the first time that the parties have had the opportunity to talk about these issues.

My inclination is to ask the parties to discuss this topic, to set a date by which any supplemental submissions that the government wishes to present to the Court in support of their opposition be provided to the Court, and then to set a date for any potential reply with respect to these issues.

That would give the parties the opportunity to ventilate any issues, allow the government to present the factual record upon which they want the Court to rely, and then give the defense the opportunity to submit a reply to that supplemental submission.

That's my proposal. Let me hear from each of the parties about what you think regarding that potential approach, starting here with counsel for the government.

MS. DEININGER: Yes, your Honor. We are happy to meet and confer with defense counsel regarding those issues.

THE COURT: Thank you. And assuming that a supplemental submission is warranted here, by when would the government be able to present it to the Court?

MS. DEININGER: Since we do need to meet and confer with Defendants first, at this point I would propose submitting it to the Court in a week, which would give us, probably, you know, three to five days after meeting and conferring with them to prepare it and submit it.

THE COURT: That's fine. So your supplemental -- any supplemental submission by the United States in opposition to this Brady request by the defendants is due a week from today. To the extent that there is a reply from the defense, it would be due the subsequent Monday.

So let's talk about the schedule of the trial. Now, I don't know whether or not these materials are *Brady* or if there

is a Brady violation that requires the imposition of a sanction. The potential cure for any Brady violation, to the extent that there is one, however, or a potential cure for any potential *Brady* violation, however, is an adjournment of the trial.

So we have two factors that weigh on me as we talk about the trial schedule. First is the extent to which an adjournment would permit the parties to prepare for trial with the consequences of my decision on the suppression hearing in hand, and two is the possibility, the prospect that an adjournment will also work to cure potential prejudice as a result of a potential finding of a *Brady* violation. So those are the two things that weigh on me. The parties have agreed that a 30-day adjournment is appropriate. The government has suggested an adjournment to August 11, 2025. I am happy to set a schedule that works well for all of the parties. So let's begin a discussion of this.

I appreciate that the government has a scheduling issue that would have us adjourn until August 11. I have schedule issues, but I will change them in order to accommodate a trial during the course of August, as my scheduling issues just take a back seat to the needs of the parties. So I am happy to try to set a trial date starting in mid August. I also have, basically, the month of September free.

As I get into this, let me just confirm, counsel. I

have set aside five weeks for this trial. In the proposed voir dire questions, the parties have suggested that less time is needed. Can I just first confirm your views about the anticipated duration of trial, as that will help us work to set an appropriate date for the rescheduled trial.

Counsel for the government, do you have a more, I will call it, focused view of how long the trial will last that I should take into account here?

MS. DEININGER: I think our position remains that, especially given the anticipated length of cross-examination of the two defendants, we expect the government's case in chief to be two weeks. I think we had previously held five weeks in part because there were several holidays that could have fallen within the trial schedule, including July 4 and Juneteenth. So if we are in a period with less court holidays -- obviously, we have to hear from defense counsel, and I do understand they are both planning on putting on a defense case and have submitted witness lists, but I think in our view, four weeks would be sufficient to hold.

THE COURT: Thank you. So I will work with four weeks as our schedule.

So I think that the real question for me here is, because of the government's unavailability until August 11, I would not propose to start until then. I am willing to start then. I would prefer to start in September, but again, I will

put my personal schedule on the back seat to give the parties the opportunity to try this case sooner. That will also require that I adjourn a civil trial, but this takes precedence over a civil matter.

So let me hear the parties' views. I think that I will say that the bidding is August 11 or September 2. I will hear from each of the parties about your views about each of those alternative dates, starting with the government.

MS. DEININGER: Your Honor, we are available at the Court's convenience starting on August 11.

THE COURT: Thank you.

Counsel for each of the defendants, let me hear from each of you.

MR. RYBICKI: Your Honor, we would prefer to begin the trial as soon as possible. We prefer a 30-day adjournment. We understand the Court's position to begin on August 11. I defer to Mr. Kousouros here because I have conferred with him. I know he has scheduling issues. I think those are more important.

THE COURT: Thank you.

Counsel for Mr. Bond.

MR. KOUSOUROS: Thank you very much. I agree with counsel, as early as practicable is when we would like to commence the trial, but we understand. I have a homicide trial that is scheduled for September 8, and I would be remiss to

schedule something on top of that. I have given my word to the Court. I will say this, though: If we are on trial here, do not think that it will be a problem, you know, to push that trial a week or two until we are done here.

And the only other scheduling issue that I have that I would ask the Court's indulgence, if we are on trial on September 4, I have a hearing that is on a 440 motion where the defendant has been in prison for many, many years, and he is being brought down from his facility. That was scheduled a long time ago. It's a one-day hearing, but I would only ask that if we are still on trial on the 4th, that I be permitted to conduct that hearing.

THE COURT: Thank you. That's fine. I think that is consensus. This is something that I can make work, which would be that we would start on the 11th and run through beginning of September. And I am happy to accommodate the hearing on the 4th. That will straddle the Labor Day holiday, potentially, should we take up that much time with the trial. But I think that we have little choice here. So let's plan to start for August 11.

Counsel, does that work for each of you? Counsel first for the government.

MS. DEININGER: Yes, your Honor.

THE COURT: Thank you.

Counsel for Mr. Wolfson?

MR. RYBICKI: Yes, your Honor.

THE COURT: Thank you.

Counsel for Mr. Bond?

MR. KOUSOUROS: Yes, sir.

THE COURT: Very good. So we will adjourn the trial date through August 11.

Counsel, is there any objection to the exclusion of time through that date? Counsel first for Mr. Wolfson.

MR. RYBICKI: No objection, your Honor.

THE COURT: Thank you.

Counsel for Mr. Bond?

MR. KOUSOUROS: Nor from us.

THE COURT: I am going to exclude time from today until August 11, 2025, after balancing the factors specified in 18 U.S.C. Section 3161(h)(7). I find that the ends of justice served by excluding such time outweigh the best interest of the public and each of the defendants in a speedy trial because it allows time for the parties to continue to litigate these anticipated motions, to allow the parties to prepare for trial.

Good. So let's talk about trial scheduling. We now have a date for each of these matters. Let's talk about each of the trial days. I am going to spend a little bit of time talking now about logistics just so that you know how each of the trial days is going to be scheduled. The trial day is going to start at 9:00 a.m. each day, including the first day.

I don't know when our panel is going to arrive. I have done a few trials in August. There isn't usually much competition, but even so, our panel may not arrive until 10:00 o'clock or so on the first day. We will use the time early in the day to discuss any outstanding issues before the venire arrives.

Every day, we are going to begin at 9:00 a.m. You should be here before that so that we can begin on time. I will take the bench at 9:00 a.m. or as close to it as I can get. We will use the window from 9:00 a.m. to 9:15 a.m. or so to discuss any outstanding issues that you anticipate for the day ahead. Testimony will begin as soon as we can after 9:15 a.m., but you should expect that in no event will we start any later than 9:30. My plan is to ask the jury to arrive at 9:00 a.m. I will tell them that I expect for the testimony to begin at approximately 9:15 a.m. I will tell them that if we are ready to go before that, then we will start before that.

We take a short lunch break in this courtroom relatively early, so around 11:30, sometime around noon. It's an early lunch break. It is a short lunch break. If we stop at 11:30, I will try to recommence testimony promptly at noon. You should make arrangements so that you can eat during that half hour window. The trial day will continue until no later than 4:00 p.m. every day after the first day. Expect that we will work until at least 5:00 p.m. on the first day as we select our jury. I expect to tell the jury that I will try to

excuse them by 3:45 on days after the first day, but in any event, that they won't be excused later than 4:00 p.m. We will take a short lunch break in the afternoon.

Now, as I said earlier, during that window between 9:00 a.m. and 9:15 when testimony begins, we should use the opportunity to discuss any evidentiary issues that you anticipate coming up during the course of the trial day. You should confer regarding the exhibits that you anticipate you will be introducing into evidence on any trial day, and try to anticipate, to the extent possible, any objections. You should raise any such objections with me before the jury is brought in for the day. My hope and expectation is that we will discuss any such issues, to the extent that we can, outside of the hearing of the jury so that we can use their time as efficiently as possible.

I know that all of you are aware of the process to obtain electronic device orders. You have been doing it already. Please just keep in mind that that is required and that you should make applications promptly prior to the trial.

You can see what audiovisual equipment is available here in this courtroom. You should make arrangements with Ms. Adolphe to make any additional equipment that you may need available at trial. I don't know what that might be, but if there is, you should make arrangements with Ms. Adolphe to make it available before the trial. I also recommend strongly that

you or a member of your team who is going to be running the hot seat come in to test the technology before the trial date. I don't want the jury to see you struggling with the technology. Ms. Adolphe can help arrange for a technology walk-through to practice using the courtroom's systems.

Counsel, let me hear from each of you. Do any of the witnesses here require the services of an interpreter?

Counsel first for the government.

MS. DEININGER: No, your Honor. We are not expecting any witnesses that require an interpreter at this time.

THE COURT: Thank you.

Counsel for each of the defendants.

MR. RYBICKI: The same for Mr. Wolfson, your Honor.

THE COURT: Thank you.

Counsel.

MR. KOUSOUROS: The same for us as well, sir.

THE COURT: Thank you. If that should change, please work with -- let the interpreter's office know promptly. It can take time to arrange for an interpreter, especially in the languages for which I understand that we may potentially anticipate foreign language testimony, Russian or Greek. That can just take some time. And so if your position changes and you think that we need foreign language interpretation in one of those languages, please make arrangements early so that the interpreter's office can obtain an interpreter promptly.

So let me talk a little bit about the jury selection process here. I use the struck panel method. Let me just briefly describe how that works, although you likely all know. We are going to select 32 people at random for the box. We will fit as many of them as we can in the jury box, in order, starting with Juror No. 1, who will be seated in the first seat in the jury box.

What I am going to do then is I am going to ask the jurors the voir dire questions. We are going to hand them to you in a moment. You will see that each of the questions has been formulated such that if a question requires some follow-up from the prospective juror, they will respond "Yes" to that question. That's the way I have tried to formulate the questions. I am going to read all of the questions to Juror No. 1 out loud. After Juror No. 1, I am simply going to ask each subsequent juror whether they had a yes answer to any of the questions. They will have a physical copy of the voir dire questions and will be directed to simply circle the number of any question for which their answer is yes.

So my process is to determine whether or not there is a good faith basis to strike a juror for cause during the course of that process. If a particular juror is struck for cause, I will immediately call somebody from the panel to replace her, and then I will ask her if she had any yes answers to any of the questions. My hope is that by the time we get to

the jury questionnaire, which asks personal information about the prospective jurors, you will know the group of 32 prospective jurors against whom you will be exercising your peremptory challenges so that you can do that with full knowledge, the full composition of the panel.

Now, when the venire arrives, I am going to give them a short introduction to the jury selection process. That overview will include a very short description of the case to give them a sense of the nature of the case. My goal is to provide the members of the venire with a neutral description of the case that no party finds at all objectionable. I have prepared a proposed case squib, which is based in part on what the parties presented to me. I am going to have that provided to you now. That, you should give me any comments on that no later than, let's call it, a week from today.

I have also drafted a set of voir dire questions that I would intend to ask at jury selection. We will also hand that to you now. You should give me comments on these voir dire questions as well. Understand, as you do, that I have already made conscious decisions about all of your proposed questions. Any such comments should also be submitted to me in a joint letter no later than a week from today. Now, you will see that the information in this set of voir dire questions is formulated with the expectation that the trial would be starting on -- when scheduled. That question we will obviously

need to rewrite. You will see my other brackets where I have asked -- I am asking the parties for specific responses.

Now, while I will be asking the questions during the course of voir dire, each of the parties will have the opportunity to suggest additional questions of me from prospective jurors. If I don't affirmatively ask for any additional questions, you should please let me just know that you have follow-up questions. If you do have follow-up questions, please just let me know. The thing that I ask you to do, however, is that you let me know privately. So come to me at sidebar or otherwise so that we can make an assessment of the proposed question and so that I can ask it, if appropriate. Don't blurt it out in front of the entire venire or the prospective juror. I will give you the opportunity, if you wish, to request additional questions, but please do so in a way that the prospective juror cannot hear it until after I and your adversary has had the opportunity to hear and comment on the prospective additional question.

Now, after the jury selection process has been completed, during my introductory remarks about the trial process, I expect to provide the jurors with some basic instructions about the trial process, the role of the Court, the parties, and the jury, as well as a brief description of the burden of proof. As part of those introductory remarks, I am going to read the prospective jurors an overview of the law.

I have reviewed the parties' joint proposal, and based on it, I have prepared a proposed description of the law, which I also am going to have handed to you. Also, give me any comments on this no later than a week from today.

Now, I expect to have the charging conference during the trial. My goal is to have a working draft of the charges that I will have considered prior to trial. I adjust them as appropriate during the course of the trial. Then we will hold a charging conference, as you know, sometime prior to closing statements. My goal is to send you all a draft of the proposed charges basically as soon as I have a draft ready for your review. Given the adjournment of the trial, that may be well before the trial at this point.

So my goal is going to be to provide you with a draft of the charges as soon as I have a draft ready for your review. Again, at this point I hope that that will be before the trial begins. What that means for you is that you should be prepared at any point after the first day of trial for us to have our charging conference. If you have the charges before trial, I will take advantage of any afternoon that we have free to try to get that work done, as much as we can. There are going to be things that will have to be undetermined; whether the defendants testify or not. Those are questions that will have to remain open until the defendants choose whether or not to do so. But I will include alternative charges for each of those

options in the proposed charge. You can look at the language and make comments on it for each alternative. From my perspective, it's just easier to cut things that are preapproved rather than draft things in the midst of trial. So be ready for a charging conference at any point after the first day of trial.

So I am not going to talk in depth about the charges now. I do have a couple of questions about the charges just briefly. Don't take from the fact that I am talking about these issues that I think that they are the most important issues. They are just things that I thought I could benefit from hearing from you about since we are here.

So let me start with the overt act requirement for the conspiracy offense. Defendants, in your proposed charge, you have included an overt act requirement for the conspiracy charge. You will see in the little description of the law that I handed to you, I did not include one. Can I hear from you? Why do you think that an overt act is required in this context, given that the statute contains specific language regarding a conspiracy offense?

MR. SILVERBLATT: Good morning, your Honor. Rob Silverblatt on behalf of Mr. Wolfson. There does not appear to be settled case law on this specific question as to whether an overt act is required in this context. We are happy to submit supplemental briefing after we review the Court's proposals to

determine whether we will continue to request the overt act be included in the instructions.

THE COURT: Thank you. Your response to the short squib that I sent you -- just had handed to you would be a good opportunity to do so. I would point you to *United States v. Roy* at 783 F. 3d 418, which speaks to this issue. I also note that the *Atilla* jury instruction that you cite to in support of the overt act requirement expressly states that no overt act is required for the IEEPA conspiracy count, so I would refer you to that.

Let me hear from Defendants about the proposal that I include a charge regarding the U.S. nexus requirement for the substantive offenses. I understand that each of the defendants agree that that element, to the extent that it's a required element, is satisfied here. Given that, is there any reason why I should include a charge with respect to it? In other words, since it's agreed that that has been satisfied here, can I omit that, as the government proposes, counsel for Defendants? First, Mr. Wolfson.

MR. SILVERBLATT: Your Honor, we would be comfortable removing the U.S. nexus.

THE COURT: Thank you.

Counsel for Mr. Bond.

MR. KOUSOUROS: Yes, Judge, as would we.

THE COURT: Thank you. Fine.

So counsel for the government, I would like to spend a little bit of time talking with you about the -- I will call it CapitalInvest, and also your construction of the regulation. First, in the defendants' proposed request, in particular Request 11, the defendants contend that the government admits that CapitalInvest was not owned by Kostin or any other blocked person.

How do you respond to that characterization of the government's theory? Is that a fact that is admitted, in other words, that CapitalInvest was not itself a blocked entity? Counsel for the government, just to help me understand what to do with the charge.

MS. DEININGER: Your Honor, I don't think that is wholly accurate, in that we are not asserting that CapitalInvest was itself a blocked entity, but our theory is that CapitalInvest was indirectly controlled, at least in part, by Andrey Kostin, and is nominally owned by Natalia Solozhentseva through other entities. There is a chain of entities between CapitalInvest and Natalia Solozhentseva, but I don't think that her nominal ownership necessarily ends the question of whether -- of who owns and controls the entity or whether a payment to that entity could have been made indirectly for Kostin's benefit.

THE COURT: Can we talk about the distinction between ownership and control? Maybe this is the focus of the

defendants' argument. OFAC has a FAQ about the issue of control versus ownership, and their FAQ says that OFAC's 50 percent rule speaks only to ownership and not to control. What's your view? If Mr. Kostin does not own but has control over CapitalInvest, can it be blocked?

MS. DEININGER: Your Honor, that's why we are not taking a position that it was a blocked entity. We are taking the position that he had some control over it and, therefore, payments to CapitalInvest, because they were made indirectly for his benefit, would have violated IEEPA.

THE COURT: Thank you. So it's for the benefit of him is the proof that the government is going to be trying to establish; in other words, that the payment was for his benefit funneled through CapitalInvest?

MS. DEININGER: Yes, your Honor.

THE COURT: Thank you. Good. Understood.

So your proposed charge, counsel for the United States, at Request 11 is something I would just like to hear your views on just briefly to help me understand your proposal. The request charge at 11 states, quote, "Any property that Kostin owned, directly or indirectly, or held an interest of at least 50 percent in, qualified as blocked property subject to the prohibitions I just discussed," closed quote.

The thing I want to just ask you to do, if you could, is to line that up, to the extent you are prepared to do so

now -- and if you are not, feel free to demur -- is just to line that language up with the text of the regulation, which I assume you are pointing to 589.303.

Is that what you are referring to? And, if so, how does your proposal tether to the reg?

MS. DEININGER: Your Honor, I think it might help us to take a closer look at this in light of the discussion we are having. I think our focus in that proposal was on the Aspen house itself, not CapitalInvest. But regardless, I think -- I have to admit, I don't have a copy of our jury instructions here in front of me, so I think you are right that we were referring to that regulation. But we can take a look at that, and we can submit that to you with our comments to, like you said, overview of the law.

THE COURT: Thank you. That would be helpful, if you don't mind. I would appreciate that, and particularly lining it up with the regulation, and thinking about how it applies in the context of each of the two substantive offenses charged, CapitalInvest and the direct. Fine.

So another part of Request 11 as to which I had a question, counsel for the government, is the language where you say this: Quote, "Ownership may be established in different ways...Merely holding title to a property absent any of the other factors that indicate ownership, such as possession, dominion, control, or management may not be sufficient to

establish ownership," closed quote.

And on that, the thing that I wanted to ask your position on is about the comment that control -- in particular, the comment that control may not be sufficient to establish ownership in light of the 50 percent role. In other words, I read that to suggest that control may be sufficient to establish ownership, where it looks as if the regulation may be suggesting that control does not by itself establish ownership. Counsel for the government.

MS. DEININGER: Your Honor, I think I need to take another look back at the sentence. I think, having heard you read it, I think that the negative "not" that's in that sentence may actually have been inadvertently included. But again, I think we would appreciate an opportunity to take a careful look back at the sentence.

My understanding is that the case law is consistent with -- this is the idea that there can be nominal owners and shell owners that hold assets, kind of, on behalf of other people. And my understanding is that the case law provides, basically, that regardless of a nominal name on paper, it can be established via indicia of control and dominion and other indicia that someone else is an actual owner.

THE COURT: Thank you. Good. I look forward to seeing your additional thoughts. That would be helpful to me.

And one other brief question for the government. In

your venue charge, you have a proposal with respect to Count One that, quote, "You need to find that it is more likely than not that an act in furtherance of the charged conspiracy was committed or caused to be committed in the Southern District of New York by the defendant or coconspirator during the life of the conspiracy," closed quote.

Can you comment on that, quote, "caused to be committed," closed quote?

MS. DEININGER: Yes, your Honor. My understanding is that that is fairly standard in the context of conspiracy case law. If the -- one of the defendants, for example, instructed someone to do something or to take some act in the Southern District of New York that was in furtherance of the conspiracy, that that would be sufficient for venue purposes.

THE COURT: Thank you. Good. So I don't have anything else.

Counsel for either defendant, any comment on the questions that I just asked the government before we move on?

MR. SILVERBLATT: Yes, your Honor, just briefly. Our position is that, particularly in the context of the capital entity's control is not sufficient, we are not entirely sure what the government means by "for the benefit of," but our position is that the government needs to prove receipt of funds by a blocked party Mr. Kostin.

THE COURT: Thank you.

Counsel for Mr. Bond.

MR. KOUSOUROS: Your Honor, that has always been our position. And what I would like the opportunity is, once we get further clarification from the government on the Court's questions, I think that the parties should be able to submit something to you as to this language.

THE COURT: Thank you. Good.

So let's talk a little bit about trial practice. This is a series of thoughts about trial practice before me in this courtroom. So first off, with respect to objections, no what I will call speaking or talking objections. Of course, you need to speak your objection. You need to talk to do so, but you should do no more than state that you have an objection and the basis for it briefly. Example: "Objection; hearsay." If I need additional information, I am happy to hear from you. We will have a sidebar about it or discuss the issue in the break of the testimony.

The principal piece of guidance that I am giving you is that objections are the opportunity of a party to obtain a ruling of law from the Court. It is not an opportunity for you to communicate with the witness or the jury about other things. I won't conscience long, discoursive objections in front of the jury. I will let you know if I think I need more information in order to rule on an objection, in which case I will ask for it, and we will take it up at sidebar. If you think I am

wrong, and you think I do need more information in order to rule on an objection, if you would like to make a proffer to support your objection, please feel free to let me know that. I am happy to hear from you, but I just want to hear from you out of the hearing of the jury. If you want to request a sidebar to discuss an issue because you think I need more information in order to rule on the objection appropriately, don't hesitate to request that time if needed, but don't think that you can engage in, I will call it, speaking objections in front of the jury. Issues can be brought to the Court's attention, and I welcome it, but I do not permit it in front of the jury. If you do, I will make it plain that you are doing something that's not permitted.

So my practice here is to request that the parties ask for leave to approach any witness or to provide him or her with any document or exhibit. That's custom in many courtrooms. We will just make that request and my response a matter of routine.

This comment should not be needed, but I just remind you to please prepare all necessary foundational questions in advance for the introduction of each exhibit. That's true in all circumstances. You need to script that. Look at treatise on foundations for evidence in advance. You need to prepare those questions in advance so that the process is as efficient as possible for the jury's sake and for ours.

My practice is to ask the opposing party if they have any objections to the introduction of any exhibit. If you don't have an objection when a party offers an exhibit into evidence, you should feel free to spontaneously rise and say that you have no objection. The default is that if you say nothing, there is no objection, but because my practice is typically to ask if a party has an objection, if you would like to state that you have no objection in advance, you are welcome to do so. Again, if you don't object, the default is that you have not objected, but because it's my practice to ask if there are objections, I invite you to say so without prompting.

Counsel, do you have a sense of how long you anticipate opening statements to last here? Counsel first for the government.

MS. DEININGER: I would expect it to be less than 30 minutes. Likely significantly less than that.

THE COURT: Thank you.

Counsel for Mr. Wolfson?

MR. RYBICKI: Your Honor, we anticipate significantly less than 30. Probably 15 to 20 minutes.

THE COURT: Thank you.

Mr. Bond.

MR. KOUSOUROS: I put an outside limit of 30, but I would anticipate less than 30 minutes.

THE COURT: Good. Thank you.

So just a couple comments about opening statements and closing arguments. My basic request is that you keep your statements in line. You should review where those lines are. Opening statements are not argument. For example, you should keep in mind that you can't vouch for witnesses, and the like. Just remember what the rules are, and make conscious decisions about the statements that you want to make in your opening statements and closing arguments. If you stray outside of the lines, you risk objections by your adversary or interruption by the Court. I prefer not to interrupt counsel during their opening statements and closing arguments, but I will if you stray.

So the best guidance that I can give you is to think conscientiously about where the lines are and make conscientious decisions about where you want to paint. If you stray outside of the lines, you risk the prospect of interruption from the Court or an instruction which may potentially undermine your position with the jury. So just be mindful of where the lines are, and take this caution to heart.

Let's talk about witnesses. Each of the parties is obviously responsible for having your witness available immediately at the conclusion of the preceding witness's testimony. Our jury's time is very important. Each of you are responsible for ensuring your witness's appearance. If you need to subpoena any witness to appear, you should do so in a

manner that ensures their appearance at the time when their testimony is required.

Counsel, is there a request to sequester any of the witnesses here? Counsel for the United States?

MS. DEININGER: No, your Honor.

THE COURT: Thank you.

Counsel for Mr. Wolfson?

MR. RYBICKI: Your Honor, to clarify, is the Court inquiring about the rule against witnesses?

THE COURT: Yes.

MR. RYBICKI: Yes, we would request that, your Honor.

THE COURT: Thank you.

MR. RYBICKI: With the exception of experts.

THE COURT: Thank you. I am directing that all fact witnesses, except for the parties, and perhaps, at the government's request, a representative of the investigative team, be present -- sorry, I am excluding all such people, other than the parties and potentially a representative. Experts may remain present in the courtroom.

I won't be able to enforce this rule because I don't know what the fact witnesses look like, so I just ask the parties to help me enforce this rule. If you see somebody come into the courtroom that shouldn't be here, tell me, and we will -- or tell Ms. Adolphe, and we will deal with it.

So let's talk about the deposition designations.

MS. DEININGER: Sorry, your Honor, if I may go back.

THE COURT: You may.

MS. DEININGER: I believe you said except for -- you mentioned an exception for experts and also potentially a representative of the -- the reason I am asking for clarity is, I think there are times where we have sometimes used -- called paralegals as summary witnesses. And if we do so, I just want to be keeping in mind whether we have to make sure we have available someone other than someone who's been helping on the case team and been sitting through other witnesses in the trial.

THE COURT: Thank you. That's fine.

So counsel for each of the defendants, let me hear from you. I understand that the government's request is that they have the option for a paralegal assisting them in the case to also potentially serve as a -- what they described as a summary witness. Any objections to carving that out from the rule?

MR. RYBICKI: No, your Honor.

THE COURT: Thank you.

Counsel?

MR. KOUSOUROS: If I can be given an opportunity to just think that through. We are talking about a paralegal who is participating in the trial then being called as a witness. If you could just give me a few minutes to think that through,

I would appreciate it.

THE COURT: That's fine. We will come back to you. Very good.

So let's talk about deposition designations and the schedule for providing designations and potential counter-designations. The parties have conducted a series of Rule 15 depositions in this case, and counsel for Mr. Bond has asked about the schedule for providing those designations. I am happy to set a schedule for that now.

Let me just talk a little bit about the process for this. It's relatively infrequent for parties to use deposition testimony in a criminal case at trial. It's very frequent in civil cases. My individual rules of practice in civil cases contain rules about deposition designations, which I am inclined to ask the parties to follow for purposes of providing me with your deposition designations. Let me tell you what my rules provide for. I have a template spreadsheet. Each of the parties imports into the spreadsheet those deposition -- components of depositions that they wish to introduce into evidence. There are columns in the spreadsheets that allow the adversary to note whether or not they have an objection to the designation and the reason for the objection, if any. It has a column for counter-designations and objections to counter-designations.

So what I expect to do is to direct the parties to

complete that so that I can rule in advance of trial as to the admissibility of any proposed deposition designations. I provide you with that outline of the process that I expect the parties to follow because I hope that it will inform our discussion of the schedule for presentation of those materials to the Court at base. It takes some work because the party offering the designations needs to populate the spreadsheet, needs to provide it to their adversary for comment and inclusion of counter-designations before it is presented to the Court.

So let me hear from the parties about your views regarding the process for the parties to present that information to the Court. I will hear your views, and then I will set some deadlines.

Counsel, I will start with the United States. Counsel for the government.

MS. DEININGER: Your Honor, we have no objection to following that process.

Does your Honor typically request any briefing to accompany that spreadsheet and explain the reason for objections or designations, or is it -- or what would our expectation be?

THE COURT: Thank you. I don't ask for briefing. There is a column in the spreadsheet that allows a party the opportunity to provide comments to explain the basis for their

objection. Oftentimes parties in civil cases will use things like codes. So H would signal hearsay. 403 would signal 403. And sometimes parties will expand on the argument, but it's not a legal brief. But it's an opportunity for the parties to signal to me what I should be thinking about as I am looking at the objection. It still is time-consuming.

MS. DEININGER: Understanding that this might take some time to put together, but that also we want to get it to the Court sufficiently before the scheduled trial date of August 11, our initial proposal would be to have the parties provide this to the Court on July 1. We can meet and confer between ourselves about the necessary exchange in order to get that done.

THE COURT: Thank you. That's acceptable to the Court.

Counsel for Mr. Wolfson.

MR. SILVERBLATT: That timeline is agreeable to us. The only issue that I would like to raise briefly with the Court is that the government's two witnesses have testimony pertaining to what we have described as yacht-related issues. It's the position of the defendants that the testimony is inadmissible in its entirety. Perhaps after our discussion of the motions in limine we might have some further guidance on that issue, but we will have individual objections in the event that the testimony is allowed in part, but would like to find

the most efficient way to explore our view, which is that none of the testimony is appropriate.

THE COURT: Thank you. I expect to provide the parties with guidance as to the admissibility of the yacht-related testimony later during today's proceeding.

Mr. Bond's counsel, how do you respond?

MR. KOUSOUROS: Your Honor, that was my only other comment, that I have been preparing just a very brief letter regarding just the general nature of that testimony. So I would have also requested an opportunity for a short brief supplemental submission that encompasses the entirety of those two witnesses' testimony. But I will await the Court's further guidance on that issue.

THE COURT: Fine. Thank you. So your deposition designations and counter-designations and the objections to them are -- when I say yours, I mean all parties -- are due by July 1. I refer the parties to my individual rules of practice in civil cases which describe the process for deposition designations. A member of my staff will e-mail the parties the template Excel spreadsheet that I described, which the parties can use as a -- to prepare those designations for the Court.

So we are going to talk about the experts. To the extent that any expert is permitted to testify at trial, you should not ask me to designate that witness as an expert before the jury. You should ask your foundational questions to

establish that she is an expert, and then you should proceed to treat the witness as an expert, barring objections. In other words, don't ask me to say in front of the jury, I qualify this person as an expert. Ask the foundational questions. Unless there is an objection, you should proceed and treat the witness as an expert. We will talk about the experts later during today's proceeding.

Briefly on exhibits. During the trial, for the sake of clarity, you should use colored exhibit stickers, if you can. Any exhibits will be sent to the jury room at the outset of deliberations. So let me just say what that should mean for you, the parties. You should make sure that every exhibit that is going to be sent back is the exhibit that should be sent back. Ms. Adolphe will keep a list of the exhibits that we think are in. You, obviously, should look at the transcript and your own notes to confirm that exhibits are in evidence. You should confirm that ideally before your closing arguments because you can't fix that. And then you should look collectively at all of the exhibits that we are going to place before the jury and confirm that they are the correct versions of those exhibits.

If there are redactions to the exhibits, you need to make sure that the redactions that are in the versions of the documents that are going back to the jury. The parties in the least cost avoider sense are the best people to make sure that

there are no errors in those documents that go back. So please confer with Ms. Adolphe. My goal is to send back to the jury all of the exhibits at the beginning of their deliberations. And so you should figure out what the package of exhibits is ideally before closing so that Ms. Adolphe can send it back to them right after they are sent off to begin their deliberations. So I think that's it.

I want to do a couple of pieces of additional work. I want to take up the issue regarding Mr. Bond's bail. I want to talk about the motions in limine and *Daubert* issues. I expect that the discussion of the motions in limine and *Daubert* issues will take some time, and the parties have been here already for an hour and a half, so my inclination is to take a short break between a discussion of the bond issues and the motions in limine.

So my proposal now would be to take up the issues related to the conditions of Mr. Bond's bail, and then to take a break, and then to return to work through the motions in limine. That's my inclination. I will hear from the parties about your views about that process.

Counsel, what do you think? First counsel for the government.

MS. DEININGER: That's fine for the government, your Honor.

THE COURT: Thank you.

Counsel for Mr. Wolfson?

MR. RYBICKI: Likewise, your Honor.

THE COURT: Counsel?

MR. KOUSOUROS: Yes, sir.

THE COURT: Good. So let's talk about the issues pertaining to Mr. Bond's bail. I have seen the letter that was submitted by the government and then the responsive letter that was submitted by counsel for Defendant regarding that text message. Let me hear first from the government. What's your view now in light of the defendant's explanation of the events that led to that text message?

MR. FELTON: Yes, your Honor. Having read the defense submission and conferring with defense counsel, our position is, provided that defense counsel puts on the record in court right now the materials proffered in the letter and proffered to the government in private conversations, the government will not seek any modification of Bond's conditions, but the government would like to hear from counsel for Mr. Bond and represent that information in open court.

THE COURT: Thank you.

Counsel for Mr. Bond, what happened here?

MR. KOUSOUROS: Your Honor, as indicated in my submission, to be clear, I had left. I was not present. We had been meeting in my office every day, reviewing discovery. Mr. Bond came in in the morning and was reviewing discovery

that we had downloaded on a server that is -- that we were using to compartmentalize and review it. We were looking for one particular subject matter with respect to this witness, and apparently Mr. Bond -- we couldn't find it. They couldn't find it. I wasn't there. Ms. Cole was there. And he did a search, what he thought was a search in his phone. And immediately upon realizing that it was not in the search bar, he immediately tried to delete it and thought that he did.

He's been in full compliance with all of his conditions, Judge. He's not reached out to anybody. He's had no contact with this witness for years, even before the inception of this case. And it truly was an unintended error. He did not -- not using his phone to reach out to this witness. He really was searching for what ultimately, over the next few days, we did find certain messages relating to what he was looking for, as described in my letter.

THE COURT: Thank you. Fine. On the basis of that proffer, I am not going to take any action to change the conditions of Mr. Bond's pretrial release. I understand that that was an error, and to err is human.

So with that, let's take a break. My expectation is that when we return, we are going to discuss the motions in limine and the *Daubert* motions. I expect that those discussions will be limited to legal issues, that is, discussion of the motions in limine, the substantive legal

issues raised by them, and the *Daubert* motions. As a result, if either defendant wishes to make a request to be excused for that portion of the conference, I think that the rules allow them to do that. Of course, they are very welcome to be here, but I just wanted to remind the parties that you may choose, if you believe appropriate, to waive that.

Good. So it's about -- it is exactly 11:30. My inclination is to take a half hour and to return at noon. Counsel, let me hear from each of you. Any objections to proceeding in that way?

First, counsel for the government.

MS. DEININGER: No objections.

THE COURT: Thank you.

Counsel?

MR. RYBICKI: None, your Honor.

THE COURT: Thank you.

Counsel?

MR. KOUSOUROS: No, sir. Thank you.

THE COURT: Thank you very much. I will see you all back here in 30 minutes.

(Recess)

THE COURT: So thank you. Welcome back.

We are back on the record after an extended recess to let the parties have lunch and stretch their legs.

So the next thing that I want to do is to talk about

the motions in limine and *Daubert* motions. I would propose to begin with the motions in limine and then to turn to the *Daubert* motions.

Let me just say, I have reviewed all of the parties' submissions with respect to the motions in limine and the *Daubert* motions. I have some, I will call it, comments about the motions that I am happy to share with the parties. I don't have any particular questions for you at this point. If either side wants to add anything to their written submissions to the Court, I will give you the opportunity to do so now, but if you don't want to add anything, I would propose to proceed and to provide the parties some feedback with respect to first the motions in limine and then the *Daubert* motions. I have some comments and, I will call it, questions, but mostly comments that I would like to make about them. But first let me give each of the parties the opportunity, if you like, to add anything to your written submissions.

First, let me just note, it looks as though Ms. Rothman has left. Thank you.

Anything that either side would like to add? First, counsel for the government?

MS. DEININGER: No, your Honor. Again, not unless you want us to address specific questions.

THE COURT: Thank you.

Counsel for Mr. Wolfson?

MR. RYBICKI: Nothing to add to the written submissions, your Honor.

THE COURT: Thank you.

Counsel for Mr. Bond?

MR. KOUSOUROS: Your Honor, very briefly. The only thing I wanted to add was that I believe that to the extent the evidentiary hearings that we have conducted in this case certainly assist us, and the Court will establish the evidentiary contours of the trial, I think that also the evidence adduced at those hearings should be considered by the Court in at least the motions in limine with respect to the expert testimony and the yacht evidence.

I think that what the Court, hopefully, has seen is that the issues in this case are really very, very confined to whether or not certainly my client violated sanctions with respect to Mr. Kostin. And I think that given the evidence that's been adduced and the information the Court has, as a supplement to our written submissions, that the relevance has decreased and the prejudice has increased, and that that should be considered in the Court's 403 analysis as to whether or not a jury really needs to hear about hundred-million-dollar yachts and expanded evidence about a sanctions regime which, as far as we are concerned, we are willing to stipulate that there were sanctions. They were imposed, and you are not allowed to violate them. I don't think that national emergencies and

everything in the context of what you have already heard about this case and what you have written in terms of framing the issues is necessary. And so I am only adding that to our written submissions because I think that the Court now has additional information to consider in the 403 balancing structure.

THE COURT: Thank you.

Counsel for the United States, any response to those additional remarks from counsel for Mr. Bond?

MS. DEININGER: Your Honor, I think these issues have been fully briefed. I respectfully disagree with Mr. Kousouros that the evidence adduced and the nature of the hearing that was already conducted has any real bearing on the relevance and the issues at trial. Your Honor ruled that their motion to suppress certain e-mail evidence was granted. We are not going to seek to rely on any of that evidence. The substance of the hearing was whether certain evidence should be suppressed or not. The Court has ruled on those issues. Whether evidence should be suppressed because of how it was obtained has no bearing on the actual relevance of evidence that has been properly obtained to the issues at trial.

THE COURT: Thank you.

MR. KOUSOUROS: Judge, I just want to be clear. So I was clear with the Court, I am not asking that the fact of suppression or that there is a difference in the evidence being

presented is what I was alluding to; just that the Court was made aware of the facts that need to be established at this trial through the evidentiary hearing, and that, understanding those, that the level of prejudice is very clear and the relevance of the proposed testimony is less. That's all.

THE COURT: Thank you. Good. Understood.

So thank you, counsel, for your briefing. Thank you for your brief remarks.

I am going to work to resolve, to the extent I can, these motions now. I am going to do so orally, so please bear with me. I have substantial analysis of the motions in limine and *Daubert* motions that I would like to provide to the parties. What I am going to do at the end of my discussion of the motions in limine is just to flag a couple of high-level issues for discussion, which I propose that we discuss after I complete this labor. Again, let me thank you for your indulgence as I work through my reasoning with respect to each of these sets of motions.

I am going to begin with 1, Introduction.

I will now deliver my decisions on the parties' motions in limine. I will do so orally.

By way of background, the United States filed its motions in limine on March 28, 2025. Those motions asked the Court to (1) admit evidence of Mr. Kostin’s ownership of the Aspen home prior to April 2018; (2) admit evidence of

Mr. Kostin's ownership of certain yachts; (3) admit evidence of defendants' alleged preparation to purchase the Aspen Home; (4) admit evidence of 40 North Star's tax filings; (5) admit statements by alleged co-conspirators in furtherance of the conspiracy; (6) admit Defendants' statements under Rule 801(D)(2)(A); (7) admit statements by third parties regarding the ownership of the Aspen home for what the Government asserts are nonhearsay purposes; (8) admit certain business records under Rules 803(6) and 902(11); (9) to permit the cross-examination of Mr. Wolfson regarding alleged prior fraudulent acts; and (10) to preclude Defendants from offering evidence that might support a claim of jury nullification. Dkt. No. 144 ("Gov. Mem."). Defendants' oppositions to that motion were filed on April 11, 2025. Dkt. Nos. 157 ("Wolfson Opp."), 159 ("Bond Opp."). The United States filed its reply on April 18, 2025. Dkt. No. 166 ("Gov't Reply").

Each of the defendants also filed motions in limine. Mr. Wolfson filed his motions in limine on March 28, 2025. Mr. Wolfson's motions asked the Court to (1) exclude the use of certain arguably inflammatory terms to describe the defendants' transactions; (2) exclude evidence of Mr. Kostin's other alleged sanctions violations—in particular those related to his alleged ownership of certain yachts; (3) exclude evidence regarding Individual-1, whose first name only is identified; (4) exclude evidence regarding national security and

geopolitical issues; (5) suppress evidence from outside of the timeframes of the warrants; (6) preclude the government from using an overview witness; and (7) to mandate the production of witness and exhibit lists well in advance of trial. Dkt. No. 139 ("Wolfson Mem."). Mr. Bond also moved in limine on the same day. In his motion, he seeks similar relief as Mr. Wolfson, seeking the exclusion of evidence about IEEPA, the basis for the sanction of Mr. Kostin and evidence regarding his yachts. Dkt. No. 143 ("Bond Mem."). Mr. Bond's motion also seeks (1) the exclusion of the testimony of the Government's expert witnesses and (2) a court order requiring the Government to provide the defense with out-of-court statements for evaluation. Mr. Wolfson also filed a motion to exclude the testimony of the Government's expert witnesses. Dkt. No. 141 ("Wolfson Expert Mem."). The Government filed its oppositions to the defendants' motions on April 11, 2025. Dkt. No. 160 ("Gov't MIL Opp."); 161 ("Gov't Expert Opp."). The motions were fully briefed with the defendants' replies, which were filed on April 18, 2025. Dkt. Nos. 166, 167.

The parties are familiar with the underlying facts. Therefore, I will not recite those in detail. To the extent that any facts in this case are particularly pertinent to my decision, those facts are embedded in my analysis.

2. Legal Standard.

I begin with an overview of some guiding legal

principles that inform my evaluation of the parties' motions in limine. "The purpose of an in limine motion is to aid the trial process by enabling the Court to rule in advance of trial on the relevance of certain forecasted evidence, as to issues that are definitely set for trial, without lengthy argument at, or interruption of, the trial." *Hart v. RCI Hosp. Holdings, Inc.*, 90 F. Supp. 3d 250, 257 (S.D.N.Y. 2015) (quoting *Highland Cap. Mgmt., L.P. v. Schneider*, 551 F. Supp. 2d 173, 176 (S.D.N.Y. 2008)). "Evidence should not be excluded on a motion in limine unless such evidence is 'clearly inadmissible on all potential grounds.'" *Id.* (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. L.E. Myers Co. Grp.*, 937 F. Supp. 276, 287 (S.D.N.Y. 1996)). Courts considering a motion in limine may reserve judgment until trial, so that the motion is placed in the "appropriate factual context." See *Natl Union Fire Ins. Co.*, 937 F. Supp. at 287. Further, "[a] ruling [on a motion in limine] is subject to change when the case unfolds, particularly if the actual testimony differs from what was contained in the [party's] proffer." *Luce v. United States*, 469 U.S. 38, 41 (1984).

The Federal Rules of Evidence govern the admissibility of evidence at trial. Under Rule 402 evidence must be relevant to be admissible. Fed. R. Evid. 402. The "standard of relevance established by the Federal Rules of Evidence is not high." *United States v. Southland Corp.*, 760 F.2d 1366, 1375 (2d Cir.

1985) (quoting *Carter v. Hewitt*, 617 F.2d 961, 966 (3d Cir. 1980)). If the evidence has "any tendency to make a fact more or less probable than it would be without the evidence" and "the fact is of consequence in determining the action," it is relevant. Fed. R. Evid. 401. Nonetheless, under Rule 403, relevant evidence may be excluded if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed R. Evid. 403.

The Second Circuit has instructed that "[d]istrict courts have broad discretion to balance probative value against possible prejudice" under Rule 403. *United States v. Bermudez*, 529 F.3d 158, 161 (2d Cir. 2008). Because "[v]irtually all evidence is prejudicial to one party or another," "[t]o justify exclusion under Rule 403, the prejudice must be unfair." Weinstein's Federal Evidence § 403.04[1][a] (2019) (citing cases). "The unfairness contemplated involves some adverse effect beyond tending to prove a fact or issue that justifies admission." *Costantino v. David M. Herzog, M.D., P.C.*, 203 F.3d 164, 174-75 (2d Cir. 2000). Further, as the advisory committee notes to Federal Rule Of Evidence 403 explain, "'[u]nfair prejudice' within its context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." Fed. R. Evid. 403 advisory

committee notes.

Federal Rule of Evidence 404(b) provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Fed. R. Evid. 404(b)(1). However, the "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident." *Id.* at 404(b)(2). "The Second Circuit's 'inclusionary' rule allows the admission of such evidence 'for any purpose other than to show a defendant's criminal propensity, as long as the evidence is relevant and satisfies the probative-prejudice balancing test of Rule 403 of the Federal Rules of Evidence.'" *United States v. Greer,* 631 F.3d 608, 614 (2d Cir. 2011) (quoting *United States v. Inserra,* 34 F.3d 83, 89 (2d Cir. 1994)). "The district court has wide discretion in making this determination . . . ." *United States v. Carboni*, 204 F.3d 39, 44 (2d Cir. 2000).

In order to assess the admissibility of "other acts" evidence under Rule 404(b), a district court follows a multi-step process:

"First, the district court must determine if the evidence is offered for a proper purpose, one other than to prove the defendant's bad character or criminal propensity. If

the evidence is offered for a proper purpose, the district court must next determine if the evidence is relevant to an issue in the case, and, if relevant whether its probative value is substantially outweighed by the danger of unfair prejudice. Finally, upon request, the district court must give an appropriate limiting instruction to the jury."

United States v. Pitre, 960 F.2d 1112, 1119 (2d Cir. 1992); accord *United States v. Schlussel,* No. 08-cr-694 (JFK), 2008 WL 5329969, at *2 (S.D.N.Y. Dec. 15, 2008).

"However, evidence of uncharged criminal activity is not considered 'other crimes' evidence if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial." *United States v. Kaiser,* 609 F.3d 556, 570 (2d Cir. 2010)(citations and internal quotation marks omitted); accord *Carboni*, 204 F.3d at 44 ("[E]vidence of uncharged criminal activity is not considered other crimes evidence under Fed. R. Evid. 404(b) if it arose out of the same transaction or series of transactions as the charged offense, if it is inextricably intertwined with the evidence regarding the charged offense, or if it is necessary to complete the story of the crime on trial.") (citation omitted). Such evidence is instead considered "direct" evidence of the charged crime. *United States v. Herron,* No. 10-cr-0615

(NGG), 2014 WL 1894313, at *4 (E.D.N.Y. May 12, 2014) (citing *United States v. Nektalov*, 325 F. Supp. 2d 367, 370 (S.D.N.Y. 2004)).

"If evidence is determined to be admissible as intrinsic or direct proof of the charged crimes as distinguished from 'other acts' under Rule 404(b) . . . the Court is not required to instruct the jury against making an improper inference of criminal propensity." *United States v. Townsend*, No. 06-cr-34 (JFK), 2007 WL 1288597, at *1 (S.D.N.Y. May 1, 2007). "However, 'where it is not manifestly clear that the evidence in question is intrinsic proof of the charged crime, the proper course is to proceed under Rule 404(b).'" *Id.* (quoting *Nektalov*, 325 F. Supp. 2d at 372).

The Court must decide preliminary or predicate questions of fact regarding the admissibility of evidence. Under Rule 104(a) of the Federal Rules of Evidence, the court "must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege." Fed. R. Evid. 104(a). When preliminary facts related to the admissibility of evidence are disputed, the party offering the evidence must prove its admissibility by a preponderance of the evidence. *Bourjaily v. United States*, 483 U.S. 171, 175 (1987). Rule 104(b) provides that "[w]hen the relevance of evidence depends on whether a

fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later." Fed. R. Evid. 104(b). This rule permits the introduction of evidence at trial "subject to connection" when other evidence is proffered to be offered later in the trial. Under certain circumstances, a court must conduct a hearing regarding a preliminary question outside of the hearing of the jury, particularly if the defendant in a criminal case is a witness and requests such a hearing, or if "justice so requires." Fed. R. Evid. 104(c).

3. The Government's Motions in Limine

A. Evidence of Mr. Kostin's Ownership of the Aspen Home Prior to April 2018

I will first address the Government's motions in limine, beginning with the Government's motion to admit evidence of Mr. Kostin's ownership of the Aspen Home prior to April 2018. Neither Mr. Wolfson nor Mr. Bond dispute that evidence regarding Mr. Kostin's ownership of the home during that period may be admitted. Mr. Wolfson presents only a targeted objection to evidence that Mr. Kostin used a straw owner to own the property between 2010 and 2013. Wolfson Opp. at 2.

Evidence of Mr. Kostin's ownership of the Aspen Home prior to the imposition of sanctions on him is relevant to this

action. Evidence regarding Mr. Kostin's use of "Straw Owner 1" is no less relevant than the other facts that the Government will introduce to establish his ownership of the property. The Government proffers that the evidence will show Mr. Kostin's indirect ownership of the home and establish the connection between CC-1, CC-3 and Mr. Kostin and the Aspen Home. Gov't Reply at 2-3.

This evidence is highly probative. This course of conduct does not have to do with Mr. Wolfson or Mr. Bond, but it is an important part of the story of the alleged crime. It shows that Mr. Kostin owned the house—the Government must establish that in order to make its case that the Aspen Home was blocked property. This is direct evidence of the crime. Its probative value is not outweighed by the risk of prejudice. Mr. Wolfson argues that the course of conduct will be "confusing, unfairly prejudicial, and unnecessary." Wolfson Opp. at 2. The Court has considered those arguments but does not conclude that the evidence suffers from such faults in a manner that justifies the exclusion of the evidence. It is necessary; it is no more confusing than any other part of the narrative, which involves the discussion of multi-layered corporate transactions. And there is not substantial prejudice because the jury will be instructed that they are to consider the criminal conduct of the defendants. (As an aside, because the conduct that we are discussing pre-dated the imposition of

sanctions, I do not understand the Government to be contending that the conduct was criminal.)

Moreover, any potential prejudicial effect can be mitigated by appropriate limiting instructions that clarify how those materials may be used by the jury. "[D]istrict courts analyzing evidence under Rule 403 should consider whether a limiting instruction will reduce the unduly prejudicial effect of the evidence so that it may be admitted." *Benzinger v. Lukoil Pan Americas, LLC* 2021 WL 431169, at *3 (S.D.N.Y. Feb. 8, 2021) (quoting *United States v. Ferguson,* 246 F.R.D. 107, 117 (D. Conn. 2007)); see also *United States v. Downing,* 297 F.3d 52, 59 (2d Cir. 2002) ("Absent evidence to the contrary, we must presume that juries understand and abide by a district court's limiting instructions."). "As the Supreme Court has recognized, limiting instructions are often sufficient to cure any risk of prejudice." *United States v. Walker,* 142 F.3d 103, 110 (2d Cir. 1998) (citing *Zafiro v. United States,* 506 U.S. 534, 539 (1993)). If Defendants believe that it would be warranted, the Court invites Defendants and the Government to work together, or separately, to propose appropriate limiting instructions. I do not believe that a limiting instruction is necessary to cure any issues here because the establishment of Mr. Kostin's ownership of the Aspen Home is direct evidence of the charged offenses, but I will entertain any request by any party to address any concern regarding potential prejudice

resulting from the introduction of this evidence.

As a result, the Government's motion to permit the introduction of evidence related to Mr. Kostin's ownership of the Aspen Home prior to April 2018 is granted, including with respect to evidence related to "Straw Owner 1."

B. Evidence Regarding Mr. Kostin's Ownership of Certain Yachts

The Government seeks to introduce evidence that "shows how Kostin owned and maintained his assets . . . . including Kostin's ownership of certain yachts . . . ." Govt' Mot. 21. Both defendants object to the introduction of this evidence, arguing that it is "highly prejudicial." Bond Opp. at 1. The defendants characterize the evidence as 404(b) evidence against Mr. Kostin that could be used by the jury to infer that they, that is the defendants, acted in manner similar to Mr. Kostin's conduct. In the alternative, the defendants seek to preclude evidence about the yachts themselves—their value, luxury and the like, which, they argue, could inflame the jury "by drawing attention to Kostin's extravagance." *Id.* at 2.

I am granting the Government's motion and denying the defendants' motions to exclude such evidence for the reasons that follow. Before I begin, I highlight the fact that the Government has stated that it "does not intend to admit evidence that Kostin violated sanctions in connection with his ownership of those yachts . . . ." *Id.* at 21 n. 13. Because the

Government does not intend to prove or argue that Mr. Kostin violated IEEPA through his ownership of the yachts, the Court denies that aspect of Mr. Bond's motion in limine.

Evidence of the means by which Mr. Kostin owned assets abroad is relevant, direct evidence of the charged crimes here. The Government is seeking to introduce this evidence to show how Mr. Kostin owned foreign assets and to establish his connection to the Aspen Home by using evidence of the people, and structures, he used to own the yachts. This is direct evidence of the charged offenses, and it is highly probative of the crimes at issue here. I understand that the Government seeks to prove that Mr. Kostin used the same agents in connection with his ownership of the yachts as with the home, such that this evidence helps to prove Mr. Kostin's ownership of the Aspen Home. This is not being offered as 404(b) evidence—and because it is direct evidence of the charged offenses, I need not consider whether it should be introduced as such.

I do not believe that the evidence is so prejudicial as to justify the exclusion of this category of evidence in its entirety, as the defendants argue. It has very high probative value—to establish Mr. Kostin's ownership of the Aspen Home, by establishing his means of ownership of foreign assets and his connection to individuals involved in transactions related to the Aspen Home. The Government is not going to argue that Mr.

Kostin violated sanctions as a result of his ownership of the yacht, so the defendants' concerns about this being viewed as evidence of other criminal conduct by him, with which the defendants are tarred, is exaggerated. The Court believes that the concern regarding the spillover prejudice resulting from evidence of Mr. Kostin's "extravagance" is not so great that it cannot be overcome through the adoption of the simple guardrails proposed by the Government. First, this is a case about a $15M ski home—that we are litigating a case about the lifestyles of the rich, if not famous, cannot be wholly avoided. Evidence of additional extravagant assets is not disproportionate to the nature of the crimes charged. Second, the Government has agreed that it will admit the evidence in a streamlined way. The Court expects that the Government will live up to its commitment, such that the evidence presented will not include unnecessary information regarding the size or amenities of the yachts. I am not precluding evidence regarding the value of the yachts to the extent that information appears in the documentation that the Government expects to present regarding the ownership of the assets.

So, in sum, for substantially the reasons argued by the United States, its motion to admit evidence regarding Mr. Kostin's ownership of certain yachts is granted—subject to the guardrails proposed by the United States. Namely, they will not be admitting unnecessary information regarding the size,

amenities or value of the yachts. The parallel motions in limine by the defendants to exclude this evidence in its entirety are denied.

C. Evidence Regarding Defendants' Preparation to Purchase the Aspen Home

The Government has moved to introduce evidence to establish the defendants' preparation for the purchase of the Aspen Home—in particular in the months preceding the imposition of sanctions on Mr. Kostin. Evidence that demonstrates their efforts to purchase the home is relevant. It is direct evidence of the alleged crimes in this case, which stem from those alleged efforts, in part. In addition to being direct evidence, it is properly admissible under Rule 404(b) for proper purposes—namely to show the defendants' plan and lack of mistake, for all the reasons explained in the Government's motion and reply brief.

The defendants' arguments regarding the admissibility of certain of the pieces of evidence identified as falling within this category are not persuasive—they argue that a reference to "K" does not prove by itself that Mr. Wolfson met with Mr. Kostin; and that evidence of a meeting with "Straw Owner 1" is irrelevant because that individual is a Cypriot banker with whom Mr. Wolfson works on other legal matters. These arguments are misplaced because they go to the weight of the evidence—a question for the jury. Put simply, the question

whether the evidence proves the point for which the Government will introduce it is for the jury to decide at trial, rather than for me to resolve beforehand. The question for the Court is whether the evidence is relevant and admissible. I conclude that it is. Therefore, the Government's motion is granted.

D. Evidence from Mr. Wolfson's and 40, I'll call it, NS's Tax Records

The Government's motion to permit the introduction of certain of Mr. Wolfson's and 40 NS's Tax Records is granted. The Government obtained those records pursuant to a court order obtained under 26 U.S.C. § 6103. The Court made a finding that the records were "or may be relevant" to a criminal act. The submissions by the Government adequately supported that conclusion. The defendants' arguments that the tax records should not be permitted for the reasons for which suppression of a search warrant in this case was sought under *Franks* are not persuasive here. First, at the time that the request was made, an indictment had been issued, so as I have ruled in my suppression decision, the issue of probable cause regarding the commission of a crime was independently established. Second, the statute does not require a finding of probable cause. And third, as the Government has pointed out, the Second Circuit has held that: "The courts should be loath to imply an exclusionary sanction in this context, especially since none appears in the Tax Reform Act itself and since civil and

criminal penalties have been expressly provided." *U.S. v. Barnes*, 604 F.2d 121, 146 (2d Cir. 1979). So even if there was an absence of evidence supporting the use of the returns—which there is not—exclusion of the evidence would not be an appropriate remedy.

The tax records are relevant to prove the Government's charges against these defendants. They are being offered to show, among other things, that the returns did not identify Mr. Wolfson as the foreign beneficial owner of the property until after Mr. Kostin was sanctioned. That decision does make the Government's theory of the case more likely to be true. It is therefore relevant. The returns contain direct evidence of the charged offenses—they provide evidence of the narrative regarding how the crime was allegedly committed.

The evidence contained in the returns is also properly admitted under Rule 404(b) because it provides evidence of Mr. Wolfson's intent, plan, knowledge and absence of mistake. The evidence is not being introduced to show that Mr. Wolfson was evading taxes, and that the information reflected in the tax returns shows a bad character or propensity to commit similar offenses. Therefore, the defendants' arguments that the evidence should be excluded under Rule 404(b) or 404 are unpersuasive. The tax records have substantial probative value as direct evidence of alleged obfuscation of Mr. Kostin's ownership interest in the Aspen Home, and that probative value

is not outweighed by any of the adverse effects against which Rule 403 guards.

E. Evidence of Statements by Alleged Co-Conspirators

The government is seeking to introduce several statements made by out-of-court declarants. Gov. Mot. at 31-38. The Government offers that these statements should be admitted as coconspirator statements under Rule 801(d). I am denying the Government's motion at this time because I cannot determine whether the Government is going to meet the preconditions to the introduction of such statements in the abstract based on the very general proffer contained in the Government's motion.

I. Hearsay Generally

"Hearsay evidence is any statement made by an out-of-court declarant and introduced to prove the truth of the matter asserted." *United States v. Cardascia,* 951 F.2d 474, 486 (2d Cir. 1991)(citing Fed. R. Evid. 802). "Of course, every out-of-court statement is not hearsay, and all hearsay is not automatically inadmissible at trial. Instead, the purpose for which the statement is being introduced must be examined and the trial judge must determine whether—if that purpose is to prove the truth of its assertion—the proffered statement fits within any of the categories excepted from the rule's prohibition." *Id.*

ii. Co-Conspirator Statements.

"Under Rule 801(d), an out-of-court statement offered for the truth of its contents is not hearsay if '[t]he statement is offered against an opposing party' and it 'was made by the party's coconspirator during and in furtherance of the conspiracy.'" *United States v. Brown*, 2017 WL 2493140, at *1 (S.D.N.Y. June 9, 2017) (quoting Fed. R. Evid. 801(d)(2)(E)). "In order to admit a statement under this Rule, the court must find: '(a) that there was a conspiracy, (b) that its members included the declarant and the party against whom the statement is offered, and (c) that the statement was made during the course of and in furtherance of the conspiracy.'" *Id.* (quoting *Gupta* 747 F.3d at 123). "Evidence may be admitted under Rule 801(d)(2)(E) only if a court finds, by a preponderance of the evidence, that the defendant and the declarant joined a conspiracy, and the challenged out-of-court statements may themselves be considered in making this determination." *United States v. Lumiere*, 2017 WL 1391126, at *5 (S.D.N.Y. Apr. 18, 2017) (citing *Bourjaily*, 483 U.S. at 175–76, 178–79). There is no requirement that the person to whom the statement is made must also be a member of the conspiracy. *Gupta*, 747 F.3d at 125 (citation omitted). "In determining the existence and membership of the alleged conspiracy, the court must consider the circumstances surrounding the statement, as well as the contents of the alleged coconspirator's statement itself." *Id.* at 123.

"The existence of a conspiracy" and the declarant's involvement in that conspiracy are "preliminary questions of fact that, under Rule 104, must be resolved by the court" and should be "established by a preponderance of proof." *Bourjaily*, 483 U.S. at 175. "An essential element of the crime of conspiracy is an agreement." *United States v. Bicaksiz,* 194 F.3d 390, 398 (2d Cir. 1999). "A fact-finder may properly find the existence of a criminal conspiracy where the evidence is sufficient to establish, by a preponderance of the evidence, that 'the . . . alleged coconspirators entered into a joint enterprise with consciousness of its general nature and extent.'" *In re Terrorist Bombings of U.S. Embassies in E. Afr.,* 552 F.3d 93, 137-38 (2d Cir. 2008) (quoting *United States v. Beech-Nut Nutrition Corp.,* 871 F.2d 1181, 1191 (2d Cir. 1989). "[T]he government 'need not present evidence of a formal or express agreement,' and may instead rely on proof the parties had a 'tacit understanding to engage in the offense.'" *United States v. Scott,* 979 F.3d 986, 990 (2d Cir. 2020) (quoting *United States v. Amato*, 15 F.3d 230, 235 (2d Cir. 1994)).

As an initial matter, I cannot conclude that any particular statements are admissible at this point. The Government has not provided me with a list of the statements that it seeks to introduce. It has provided an illustrative list of some statements that it may seek to introduce in this

category. I obviously cannot provide blanket guidance about all statements by the alleged co-conspirators. I must deny this motion without prejudice at this time.

I would like to make a few brief remarks about the Government's proposed evidence. The Government has not proffered facts that would permit me to conclude at this point that the conspiracy existed and that the speakers were all members of it or that their statements were in furtherance of the conspiracy. The Government will have to provide a foundation for the introduction of each such statement at trial.

I want to raise one substantive issue with the premise of the Government's pitch to admit certain portions of this evidence. The series of statements that the Government has provided as illustrations of its request include statements made in 2015 and 2016. Gov't Mem. at 37. The Government asserts that all of the statements were "made during the conspiracy which began by at least May 2014 and in furtherance of its objective of concealing Kostin's true ownership of the home . . . ." *Id.* The issue with the Government's theory that I want to flag is that I do not understand that it was illegal for Mr. Kostin to own the home in 2015 and 2016—the time of those statements. The Government does not argue that it was. Instead, the Government proffers that it expects to introduce evidence that Russian oligarchs took actions to conceal their

assets with a connection to the U.S. "in anticipation of potential U.S. sanctions," Gov't Mem. at 36, not in violation of actual sanctions. As a result, I do not understand how the Government is going to prove by a preponderance of the evidence that there was a conspiracy to commit any offense that predated the sanction order against Mr. Kostin.

There are any number of reasons why a rich person would want to obscure his ownership of a piece of expensive property—as the lawyers for the parties well know. The lawyers here likely know people who own their apartments here in New York City through LLCs. The Government knows from their expert's report that Russian oligarchs obscure their ownership of assets for lots of reasons other than to evade non-Russian sanctions regimes. I do not know what federal law these alleged conspirators were alleged to have been breaking in 2015 or 2016. If there was no criminal object of their agreement—only a legal object—I do not know how the Government will prove that there was a conspiracy and that these statements were made to further it. I do not take a position on the issue now, but I am flagging what may be a profound issue with the Government's assertion that people acting to hide Mr. Kostin's ownership of the home before he was sanctioned were engaged in a criminal conspiracy: namely, that it was not illegal for him to own the house before then.

f. Evidence of Defendants' Prior Statements

The Government seeks to introduce out-of-court statements made by Mr. Wolfson and Mr. Bond. Mr. Wolfson's prior statements are properly admitted as non-hearsay under Rule 801(d)(2)(A). Mr. Wolfson argues that the statement should be excluded because the meaning of his statement about the place of his residence is ambiguous, and therefore irrelevant. The statements by Mr. Wolfson that have been identified are relevant. Mr. Wolfson did not disclose that he had a residence in Colorado, which supports the Government's contention that he was a straw owner of the Aspen Home. Whether the statement should be interpreted in the way that Mr. Wolfson advocates is a question for the jury, not the Court. The evidence has probative value that is not outweighed by the risk of juror confusion or other issues identified in Rule 403.

Mr. Bond's post-arrest statements are properly admissible against him as non-hearsay. Mr. Wolfson is correct that if unedited, the admission of these statements would likely violate *Bruton* if Mr. Bond does not testify at trial. However, I believe that they can be edited so that, in conjunction with the administration of an appropriate limiting instruction, they may be introduced at trial regardless of whether Mr. Bond testifies.

"The Confrontation Clause provides, 'In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him. . . .' *U.S. Const.*

amend. VI. The crux of this right is that the government cannot introduce at trial statements containing accusations against the defendant unless the accuser takes the stand against the defendant and is available for cross examination." *Ryan v. Miller,* 303 F.3d 231, 247 (2d Cir. 2002).

"A defendant's right to confront the witnesses against him includes the right not to have the incriminating hearsay statement of a nontestifying codefendant admitted in evidence against him." *Mason v. Scully,* 16 F.3d 38, 42 (2d Cir. 1994) (citing *Bruton*, 391 U.S. at 137 (1968)). In *Bruton* The Supreme Court explained that limiting instructions are insufficient to cure inculpatory statements of co-defendants in certain circumstances:

"[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored. Such a context is presented [when] the powerfully incriminating extrajudicial statements of a codefendant, who stands accused side-by-side with the defendant, are deliberately spread before the jury in a joint trial."

Bruton, 391 U.S. at 135-36. The Supreme Court held "that a defendant is deprived of his rights under the Confrontation Clause when his nontestifying codefendant's confession naming him as a participant in the crime is

introduced at their joint trial, even if the jury is instructed to consider that confession only against the codefendant." *Richardson v. Marsh,* 481 U.S. 200, 201-202 (1987).

"Not every statement of a co-defendant is barred by *Bruton*," *United States v. Tropiano,* 418 F.2d 1069, 1081 (2d Cir. 1969). In keeping with the animating concern behind *Bruton*, that in the face of powerful out of court accusations from a co-defendant, the jury would be unable to follow limiting instructions, "[t]he Second Circuit has "held that cautionary instructions will avoid a *Bruton* confrontation issue unless the admitted evidence is 'clearly inculpatory' as to the complaining codefendant and is 'vitally important to the government's case.'" *United States v. Rubio,* 709 F.2d 146, 155 (2d Cir. 1983). In *Tropiano*, for example, the Circuit endorsed the admission of a co-defendant's statement where it did not contain an accusation against his co-defendants and was not offered for that purpose. *Tropiano*, at 1081.

The Second Circuit has held that redactions to a co-defendant's statement to remove references to the other's name may be admitted without violating a co-defendant's rights under *Bruton*, *United States v. Tutino*, 883 F.2d 1125, 1135 (2d Cir. 1989).

"To be clearly inculpatory, the redacted statement, standing alone, must connect a codefendant with the crime." *United States v. Burke,* 700 F.2d 70, 85 (2d Cir. 1983).

However, "[t]estimony need not contain an explicit accusation in order to be excluded as a violation of the Confrontation Clause. To implicate the defendant's confrontation right, the statement need not have accused the defendant explicitly but may contain an accusation that is only implicit." *Ryan v. Miller*, 303 F.3d 231, 248 (2d Cir. 2002) (quotation marks omitted). "Thus, testimony that indirectly includes an accusation against the defendant may violate the Confrontation Clause even if the testimony is not a direct reiteration of the accusatory assertion." *Id.*

Here, the Government has proposed to redact the references to Mr. Wolfson's name from Mr. Bond's statements. Gov't Reply at 21. Those redactions remove all references to Mr. Wolfson from Mr. Bond's statements. With those changes, Mr. Bond's testimony may be admitted at trial even if he does not testify, subject to a limiting instruction. I ask that the parties present a proposed limiting instruction on this issue no later than a week from today.

g. Evidence of Statements Regarding Ownership of the Aspen Home for Non-Hearsay Purposes

The Government has moved in limine for the Court to permit the introduction of several out of court statements, which, the Government asserts, are offered not for the truth of the matter asserted, but rather to show the state of mind of the speaker, or the effect on the listener. The Government's

motion does not provide me sufficient information to grant the motion because it is categorical in nature and does not identify all of the statements or proffer evidence that will be introduced as a foundation for the introduction of each. I can comment on certain of the statements that have been identified with more specificity, however.

First, I agree with the Government's position that Employee-1's allegedly false exculpatory statements may be admissible. The Government will need to demonstrate the foundation for the statement at trial—namely, that Employee-1 was a co-conspirator of Mr. Wolfson and that the other conditions for the admission of such a statement have been established. But assuming that they can do that, false exculpatory statements of a co-conspirator are relevant information. They can show the intent of the conspirators to obscure their improper conduct. If the Government establishes that the Employee was a co-conspirator, the evidence of her state of mind will likely be relevant for the jury's assessment of the conduct of her alleged co-conspirators. The probative value of such evidence is not categorically outweighed by a danger of unfair prejudice or the other concerns articulated in Rule 403. But again, I cannot conclude that the statement can be admitted yet—the Government will have to prove the premises of its position. But I disagree with the defendant's arguments that the introduction of a false exculpatory statement by a

co-conspirator is categorically irrelevant or otherwise necessarily so prejudicial that its admission should be precluded.

Second, while the defendants have not raised specific objections to the other statements identified by the Government, I agree with their argument that I should be "extremely wary of the government's proffered justification" for the introduction of the evidence for non-hearsay purposes. Wolfson Opp. at 12. The Government's proposition is that the statements are introduced to show that people understood Mr. Kostin to be the owner of the home, rather than as affirmative statements of his ownership, to prove his dominion and control over the home. But the risk of prejudice with respect to some of these statements appears to be substantial. The Second Circuit has held that "the mere identification of a relevant non-hearsay use of such evidence is insufficient to justify its admission if the jury is likely to consider the statement for the truth of what was stated with significant resultant prejudice. The greater the likelihood of prejudice resulting from the jury's misuse of the statement, the greater the justification needed to introduce the 'background' evidence for its non-hearsay uses. *U.S. v. Reyes*, 18 F.3d 65, 70 (2d Cir. 1994).

I am not able to resolve this dispute now, but I will comment on some issues with respect to certain of the

statements that the Government seeks to introduce. First, the Government wants to introduce a statement by Mr. Kostin in which he introduces himself and states that "an entity I control purchased [the Aspen Home] last year." Gov't Mem. at 44. On its face, accepted for the truth of the matter this is a statement that he indeed purchased the house. The Government asserts that its value is about the state of mind of Mr. Kostin or on the listeners, but recognized that there is a high risk that the jury will understand this statement to mean what it says—that Mr. Kostin indeed purchased the home rather than just that he thinks he purchased the home. And the Government has not established what the probative value for this case is of the impact of the letter on its recipients—presumably the neighbors to whom it was addressed. So, the balance of the probative value of this evidence as nonhearsay against the prejudicial impact of its misapprehension by the jury as an improper hearsay statement seems to be questionable. I am going to have to engage in a similar balancing test with respect to the statements of the Property Manager that are identified in the Government's motion. The Government's motion seems to be predicated on the assumption that identification of a non-hearsay purpose for the statement by itself is sufficient to authorize its admission. The Circuit told me in *Reyes* that more is required. So, I must deny this motion on the record before me. I need more to know why it is that the non-hearsay

value of these statements is such that they are admissible, given the rule articulated in *Reyes*.

h. Evidence of Statements by Alleged Agents of Defendants

The Government has moved in limine for the Court to permit it to "introduce communications by certain individuals who worked for Wolfson and/or Kostin and acted as their agents and representatives regarding the Aspen Home." Gov't Mem. at 46. The Government has identified four categories of statements that they wish to admit. *Id*. But they have not specified the nature of the actual statements. I must deny this motion because I will need to evaluate whether the Government has laid a proper foundation for the introduction of each given statements at trial. The Government has not told me what the statements are, or in what context they were made. So, I cannot grant the motion. I will have to evaluate the evidence when it is presented at trial based on the statement itself. Fundamentally, because the Government's offer of proof is so vague, its motion amounts to little more than a request that I reaffirm the general rules that apply to vicarious statements.

Rule 801(d)(2)(D) provides that a statement is not hearsay if the statement "is offered against an opposing party and . . . was made by the party's agent or employee on a matter within the scope of that relationship and while it existed." "A sufficient foundation to support the introduction of vicarious

admissions therefore requires only that a party establish (1) the existence of the agency relationship, (2) that the statement was made during the course of the relationship, and (3) that it relates to a matter within the scope of the agency." *Pappas v. Middle Earth Condominium Ass'n*, 963 F.2d 534, 537 (2d Cir. 1992).

The Government has proffered that "the evidence will establish an agency relationship between Wolfson, Kostin, and various individuals." Gov't Mem. at 48. In particular, they identify Wolfson Employee-2, as having provided tax and accounting services to Mr. Wolfson. If the Government can establish that he did and that the statements that are offered against Mr. Wolfson were made in the course of the relationship, the rule will apply and I expect they would be admissible. But I cannot determine whether they will be on this record.

Here too, I want to flag a substantial question regarding the Government's motion. The Government points to potential statements by Lawyer-1, Lawyer-1 Assistant, and Property Manager. In its proffer, the Government asserts that they worked on behalf of 40 North Star starting in 2010. I do not know how the Government is going to prove that any statements made by any of those people were made as representatives of Mr. Wolfson before he purchased an interest in the home. The rule says that the declarant must be the

agent of the person against whom the statement is offered. The Government's motion seems to be based on the premise that a statement by an agent of Mr. Kostin can be introduced against Mr. Wolfson, but they have provided no legal basis to support that conclusion in their briefing. And, as I said earlier, I struggle somewhat to understand how the Government expects to establish that a criminal conspiracy existed before Mr. Kostin was sanctioned. So again, I cannot resolve these issues in the context of this motion in limine—the Government's motion is far too general. But to the extent that the Government seeks to use 801(d)(2)(D) to introduce declarations made outside of court against the defendants here, they are reminded that the rule requires that the statement be made by "the party's agent or employee"—not any person's agent or employee. If the Government takes the position that statements by Mr. Kostin's agents can be introduced against Mr. Wolfson, or that a conspiracy existed or can have existed prior to the date on which Mr. Kostin was sanctioned, such that statements by others prior to that date can be introduced as evidence of statements by co-conspirators in furtherance of the conspiracy, I would ask that the government provide me with supplemental briefing on those issues no later than a week from today.

i. Cross-Examination of Mr. Wolfson Regarding Fraud Claims

The Government has moved in limine to permit it to

cross-examine Mr. Wolfson regarding prior allegedly fraudulent conduct. I expect that should Mr. Wolfson testify, I would permit cross-examination on that topic. The Government has proffered that Mr. Wolfson was engaged in a complex fraudulent scheme. As proffered, that conduct is not merely a theft, but rather conduct that is probative of Mr. Wolfson's truthfulness or untruthfulness under Rule 608(b).

j. Advice or Presence of Counsel Defense

The defendants have disclaimed any intention to present evidence in support of an advice or presence of counsel defense. Wolfson Opp. at 18. As a result, I understand that a ruling on this aspect of the Government's motions in limine is not required.

k. Jury Nullification

Finally, the Government has asked that the Court exclude evidence that tends to support jury nullification. Largely, the defendants agree that they will not be introducing such evidence. The one caveat offered by Mr. Wolfson is that he intends to present evidence that he has advocated against the Putin regime. Wolfson Opp. at 18. I do not know in what form this evidence will be presented, so I cannot rule on this motion definitively now. However, I agree with Mr. Wolfson that evidence of that type would have substantial probative value in the case. Evidence of Mr. Wolfson's opposition to the Putin regime would help to demonstrate why he is an unlikely straw

man for Mr. Kostin—an oligarch sufficiently associated with President Putin that he has been sanctioned by the United States. I do not believe that the probative value of such evidence, that is of Mr. Wolfson's advocacy, will be outweighed by undue prejudice—in particular because of a risk of jury nullification.

4. Defendants Motions in Limine

a. Evidence of Mr. Kostin's Ownership of Certain Yachts and of Mr. Kostin's Other Sanctions

I have already ruled regarding the admissibility of evidence regarding Mr. Kostin's ownership of certain yachts. Since I granted the Government's motion on this issue, Defendants' motions related to this issue are denied. And because the Government has stated that it will not admit evidence of Mr. Kostin's other sanctions, Mr. Wolfson's motion to exclude such evidence is also denied.

b. Use of "Inflammatory" Terms by the Government

Defendants have moved for me to exclude the use of certain "loaded, inflammatory, and pejorative terms such as: 'shell,' 'front,' 'sham,' 'straw,' 'tax haven,' and similar unfairly prejudicial terms. Wolfson Mem. at 1; Bond Mem. at 19. Defendants' argument that these terms are unfairly prejudicial rests on Judge Matsumoto's opinion in *United States v. Watts*, 934 F. Supp. 2d 451, 482 (E.D.N.Y. 2013). But the opinion in *Watts* made that finding without reasoning or analysis, and I do

not find it persuasive. Instead, I join in the view of my colleague, Judge Torres, who recently wrote that "to the extent that the terms accurately describe entities and individuals at issue, the Court cannot agree that they are unfairly prejudicial." *United States v. Guo*, 2024 WL 1862022, at *4 (S.D.N.Y. 2024). As in *Guo*, in this case the "Government shall not be precluded from using the challenged terms at trial, provided that it lays a sufficient factual predicate beforehand showing that the terms are appropriate." *Id.*

c. Evidence Regarding People with a Particular First Name, Which I Refer to as "X"

The defendants have moved to preclude the Government from offering evidence related to "Russian women named [X] with unknown surnames who are purportedly in Mr. Kostin's orbit." Wolfson Mem. at 7. They argue that the evidence is irrelevant because X is a common first name and the Government has not demonstrated that the person named X is the person referenced in the indictment as CC-3. This motion is denied for the reasons described in the Government's reply. At base, this evidence is relevant—it tends to prove a fact in dispute. Whether the Government can ultimately prove that the references to X are to the same person is a question for the jury to resolve. This is an issue that goes to the weight of the evidence, not its relevance. The probative value of the evidence is not outweighed by the risk of unfair prejudice or

juror confusion. If the defense believes that the Government's proof is weak, it can make that argument to the jury. The motion is denied.

d. Testimony and Arguments Regarding National Security and Geopolitical Considerations

The defendants have moved to exclude evidence or arguments "about the national security considerations that can motivate sanctions, about any national emergencies that have been declared and about the nexus between the sanctions at issue in this case and the Russia-Ukraine war." Wolfson Mem. at 10. I am going to grant this motion in part and deny it in part.

Evidence of the existence of the sanctions regime, the fact of the sanction against Mr. Kostin, and the circumstances that led to the sanction are relevant evidence of the crime. The defendants have stated that they are willing to stipulate to the fact of the sanction, which is a concession that these facts are relevant, and I cannot force the Government to agree to a fact. More importantly, the geopolitical developments leading up to the imposition of sanctions on Mr. Kostin provide necessary context for the alleged crimes. It explains the timing of the defendants' alleged actions—as they allegedly worked to set up a structure to hide Mr. Kostin's ownership as sanctions against him looked to be increasingly likely because of the kind of geopolitical considerations that Defendants'

motion would exclude. So, this evidence is relevant and has substantial probative value.

The importance of the sanctions statute, and the significance of the sanction decision to the United States, however, has very little probative value. The jury is not supposed to evaluate the wisdom of the laws passed by Congress—or, in this case, the judgment of the President to impose sanctions. Those are facts that they are required to accept. So, there is very little probative value in explaining to the jury the significance of the sanctions regime on U.S. security or policy. Any modest probative value of such evidence is substantially outweighed by the risk of unfair prejudice. If the jury is led to understand that these laws are of such significance to the national security of the United States, it is more likely to find in favor of the Government for an improper purpose—a sense of patriotism. As a result, I do not expect to permit the United State to introduce evidence or argument about the significance of the laws or the sanctions regime to the national security of the United States. For the sake of clarity, I am not precluding the government from referring to the word "Emergency" as it is used in the title of the statute, or insofar as the word is used in any document that implements the sanction against Mr. Kostin. Outside of that context, however, I do not expect the Government to argue that this case—and by implication a conviction—is of particular

significance to the national security of the United States.

e. Suppression Motion Regarding Evidence Outside of Date Ranges

The defendants initially moved to exclude evidence falling outside of the date ranges of several warrants. Wolfson Mem. at 12; Bond Mem. at 19. Because the Government has agreed not to use evidence outside of the scope of the date ranges authorized in those warrants, Gov't Opp. at 15, the issue, as initially raised in the defendants' motions in limine no longer requires a ruling by the Court. The defendants have separately sought the suppression of evidence obtained pursuant to a later warrant, which was not the subject of their initial motions in limine. I will address that issue separately, as the parties know.

f. Government Overview Witnesses

Finally, I am denying the defendants' motion to preclude the Government from using overview witnesses. The Government has stated that it does not intend to do so, so the motion does not require a ruling from the Court at this time.

So counsel, thank you for your patience as I got through those decisions on the motions in limine. I just want to take a moment just to highlight the couple of things that I wanted to highlight. First, I do really need information about particular statements in order for me to make decisions about their admissibility. I denied, I think it was, Mr. Bond's

motion to require the government to produce each statement because I agreed with the government that there was not a particular foundation in law for me to require that they do so. But notwithstanding that, it certainly would be helpful to have information about -- more information about the specific statements in advance of trial so that the process of litigating their admissibility can be streamlined. It will make the trial more efficient. And the government may benefit from having some sense in advance of whether the statements that they seek to introduce will be introduced into evidence as admissible evidence. So I just make that observation. I am not providing any -- making any request.

Second, as I have said, many of the government's arguments about the admissibility of alleged coconspirator statements relate to statements that were made before Mr. Kostin was sanctioned. I again want to invite the government's views on this question whether a conspiracy can have existed such that statements can have been made in furtherance of it prior to the date on which Mr. Kostin was actually sanctioned. I struggle with the basis for this argument.

Counsel for the government, if you have any comments that you would like to share now, to the extent I am misunderstanding your view or if there is some law that you want to point me to, I will welcome it. And, of course, as I

said, I have invited further briefing on this topic. But if there is anything that you would like to say now to introduce the conversation, I am happy to hear from you. You can demur, if you like.

MR. FELTON: Not to prejudice our written submission, I would note the case *United States v. Russo* on pages 33 to 34 of ECF Docket No. 144 as well as the footnote that immediately follows, footnote 21. It is good law in the Second Circuit that for purposes of the coconspirator hearsay exception, a conspiracy's objective, quote, "need not be criminal at all" and a "joint venture" among the parties counts as a conspiracy for purposes of the Rule.

I note also last year, in 2024, the Eleventh Circuit in a case *U.S. v. Holland*, I believe it's 117 F. 4th 1352, notably at 1357-58 n. 2 cites at least eight circuits where that's also the law, and numerous treatises, including Wright & Miller, that make this point. Those cases generally cite in civil cases where this exception applies. So a criminal conspiracy is not required under the law. That's one of the bases.

We also cite throughout a number of hearsay exceptions -- sorry, other provisions. I note Federal Rule of Evidence 803(3). The then-existing mental, emotional, or physical condition is also a basis for several statements. And I think for a lot of the statements -- obviously, we haven't

given you a full list, and we hear you loud and clear about that. But for certain statements that we -- in this category, we would note they be admissible for the effect on the listener. We note that a lot of them are not even factual statements at all, so the idea that they would be being admitted for their truth does not apply. The fact that they are commands or rules directed to a witness from someone like CC-1, 2, or 3 is significant because during that time period when Wolfson claims he owns the house, it would show, in fact, Kostin's key representatives and trusted associates are the ones really running the show at the house.

THE COURT: With respect to *Holland* and the other cases, are those looking at (d)(2)(D) or (E)? I will look at them after seeing your briefing.

MR. KOUSOUROS: (d)(2)(E).

MR. FELTON: E, as in Edward.

THE COURT: Thank you.

MR. FELTON: I would also note a case, *U.S. v. Hwa* from the Eastern District, 2022 WL 901796.

THE COURT: Thank you.

MS. DEININGER: Your Honor, the only other thing I would add on that is your Honor invited supplemental briefing. I think we would like to take you up on that. You asked for within a week. In light of the fact that we have now adjourned the trial date until August and the parties are going to be

dealing with submissions related to the evidentiary hearing, and Defendants' *Brady* claim, I wonder if we might get some additional time before we are required to submit that to you on this issue.

THE COURT: Thank you. I don't have a problem with that. If you need additional time, I am happy to give it to you. We have reasonable time. If you would like two weeks, you can have that.

Bear with me for just a moment.

MS. DEININGER: Thank you.

THE COURT: You are welcome.

I just looked at *Hwa*. Counsel, what's the citation for *Holland*?

MR. FELTON: 117 F. 4th 1352, and the pin cite I have is 1357-58, as well as note 2.

THE COURT: Thank you.

MR. FELTON: Again, your Honor, we would also point to *Russo* and note 21 in our filing at 144.

THE COURT: Thank you. So I look forward to seeing your submissions.

Anything from the defense before I move to the *Dauberts*?

MR. RYBICKI: No, your Honor.

MR. KOUSOUROS: No, sir.

THE COURT: Good. Thank you. So let's turn to those.

Now, I intend to address Defendants' motions in limine to exclude the testimony of the Government's expert witnesses, Dr. Louise Shelley, Supervisory Special Agent Robert J. Hanratty and Alan Santos with the Office of Foreign Assets Control ("OFAC"). I am also going to resolve the Government's motion to exclude the testimony of Mr. Wolfson's proposed expert, William McCausland. I will do so orally. The parties are familiar with the underlying facts and procedural history. Therefore, I will not recite those in detail. To the extent that any of the facts in this case are pertinent to my decision, those facts are embedded in my analysis. For the reasons that follow, I am going to deny Defendants' motions to exclude all of the testimony of each of the Government's experts' testimony. However, I am going to exclude some of the proposed testimony by Dr. Shelley and Agent Hanratty.

Both Mr. Wolfson and Mr. Bond have sought to exclude the testimony of the Government's expert witnesses. See Bond Mem. at 12-16; Wolfson Expert Mem. In their motions, the defendants have challenged the admissibility of the testimony of Dr. Shelley and Agent Hanratty on the basis that it is not relevant—or helpful to the jury—and that it is unduly prejudicial. They seek to exclude the testimony of Mr. Santos because, they assert, his anticipated testimony includes descriptions of the legal operation of the U.S. sanctions regime and would supplant the role of the Court. I believe that

expert testimony regarding the use of shell corporations and the like to obscure ownership is something that is beyond the ken of a lay juror: Expert testimony on how such structures work will be helpful to the jury. But I conclude that the testimony suggesting the use of such structures by wealthy Russians—as opposed to wealthy people of any other nationality does not have sufficient indicia of reliability. In particular, I plan to preclude them from testifying that these are techniques that Russians in particular use, or that Russians use these techniques for any particular purpose—in particular to evade sanctions.

I. Legal Standard

a. FRE 702 Generally

Federal Rule of Evidence 702, which governs the admissibility of expert testimony, reads:

"A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert's opinion reflects a reliable application of the principles and methods

to the facts of the case."

Fed. R. Evid. 702. Rule 702 was recently amended. The Advisory Committee on Evidence Rules modified the text of the rule in response to several court decisions that admitted expert testimony too liberally. The revised language, which went into effect on December 1, 2023, clarifies that (i) the party introducing expert testimony has the burden to show that "the proffered testimony meets the admissibility requirements," and (ii) "each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology." Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the Supreme Court explained that Rule 702 requires district courts to act as gatekeepers by ensuring that expert testimony "both rests on a reliable foundation and is relevant to the task at hand." *Id.* at 597. As such, the Court must make "a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue." *Id.* at 592–93. In short, the Court must "make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant

field." *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999).

b. Qualification as Expert

"Rule 702 requires a trial court to make an initial determination as to whether the proposed witness qualifies as an expert." *Baker v. Urban Outfitters, Inc.*, 254 F. Supp. 2d 346, 352-53 (S.D.N.Y. 2003). "Courts within the Second Circuit 'have liberally construed expert qualification requirements' when determining if a witness can be considered an expert." *Cary Oil Co., Inc. v. MG Refining & Marketing, Inc.*, 2003 WL 1878246, at *1 (S.D.N.Y. Apr. 11, 2003) (quoting *TC Sys. Inc. v. Town of Colonie, N.Y.*, 213 F. Supp. 2d 171, 174 (N.D.N.Y. 2002)); accord *Plew v. Ltd. Brands, Inc.*, 2012 WL 379933, at *4 (S.D.N.Y. Feb. 6, 2012). "To determine whether a witness qualifies as an expert, the Court must first ascertain whether the proffered expert has the educational background or training in a relevant field." *Crown Cork & Seal Co., Inc. Master Retirement Trust v. Credit Suisse First Boston Corp.*, 2013 WL 978980, at *2 (S.D.N.Y. Mar. 12, 2013) (citation and internal quotation marks omitted). "Any one of the qualities listed in Rule 702—knowledge, skill, experience, training, or education—may be sufficient to qualify a witness as an expert." *Id.* (citing *Tiffany (N.J.) Inc. v. eBay Inc.*, 576 F. Supp. 2d 457, 458 (S.D.N.Y. 2007)).

Even if a proposed expert lacks formal training in a

given area, he may still have "practical experience" or "specialized knowledge" qualifying him to give opinion testimony under Rule 702. See *McCullock v. H.B. Fuller Co.*, 61 F.3d 1038, 1043 (2d Cir. 1995) (quoting Fed. R. Evid. 702) (internal quotation marks omitted). But "[i]f the witness is relying solely or primarily on experience then [he] must explain how that experience leads to the conclusion reached, why that experience is a sufficient basis for the opinion, and how that experience is reliably applied to the facts." *Pension Comm. of Univ. of Montreal Pension Plan v. Banc of Am. Sec., LLC,* 691 F. Supp. 2d 448, 473 n.148 (S.D.N.Y. 2010) (quoting Fed. R. Evid. 702 Advisory Committee Note). Where a witness's "expertise is too general or too deficient," the Court "may properly conclude that [he is] insufficiently qualified." *Stagl v. Delta Air Lines, Inc.*, 117 F.3d 76, 81 (2d Cir. 1997).

A court must then "compare the area in which the witness has superior knowledge, education, experience, or skill with the subject matter of the proffered testimony." *United States v. Tin Yat Chin,* 371 F.3d 31, 40 (2d Cir. 2004) (citing *United States v. Diallo*, 40 F.3d 32, 34 (2d Cir. 1994)). "The expert's testimony must be related to those issues or subjects within his or her area of expertise." *Crown Cork*, 2013 WL 978980, at *2 (citing *Malletier v. Dooney & Bourke, Inc.*, 525 F. Supp. 2d 558, 642 (S.D.N.Y. 2007)). "If the expert has educational and experiential qualifications in a general field

closely related to the subject matter in question, the court will not exclude the testimony solely on the ground that the witness lacks expertise in the specialized areas that are directly pertinent." *In re Zyprexa Prods. Liab. Litig.*, 489 F. Supp. 2d 230, 282 (E.D.N.Y. 2007) (citing *Stagl*, 117 F.3d at 80). "Thus, an expert 'should not be required to satisfy an overly narrow test of his own qualifications,' and the court's focus should be on 'whether the expert's knowledge of the subject is such that his opinion will likely assist the trier of fact in arriving at the truth.'" *Crown Cork*, 2013 WL 978980, at *2 (quoting *Johnson & Johnson Vision Care, Inc. v. CIBA Vision Corp.*, 2006 WL 2128785, at *5 (S.D.N.Y. July 28, 2006)). "Assertions that the witness lacks particular educational or other experiential background, 'go to the weight, not the admissibility, of [the] testimony.'" *Zyprexa Prods.*, 489 F. Supp. 2d at 282 (quoting *McCullock*, 61 F.3d at 1044).

C. Expert Testimony Must Assist the Trier of Fact

A district court must conclude that the proposed testimony will assist the trier of fact. *In re Rezulin Products Liab. Litig.*, 309 F. Supp. 2d 531, 540 (S.D.N.Y. 2004). "Testimony is properly characterized as 'expert' only if it concerns matters that the average juror is not capable of understanding on his or her own." *United States v. Mejia*, 545 F.3d 179, 194 (2d Cir. 2008); see also *United States v. Amuso*, 21 F.3d 1251, 1263 (2d Cir. 1994) ("A district court may commit

manifest error by admitting expert testimony where the evidence impermissibly mirrors the testimony offered by fact witnesses, or the subject matter of the expert's testimony is not beyond the ken of the average juror.")

"Weighing whether the expert testimony assists the trier of fact goes primarily to relevance." *Faulkner v. Arista Records LLC*, 46 F. Supp. 3d 365, 375 (S.D.N.Y. 2014) (citing *Daubert*, 509 U.S. at 591). Relevance can be expressed as a question of "fit"—"whether expert testimony proffered in the case is sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute." *Daubert*, 509 U.S. at 591 (quoting *United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985)). The testimony is not helpful if it "usurp[s] either the role of the trial judge in instructing the jury as to the applicable law or the role of the jury in applying that law to the facts before it." *United States v. Duncan*, 42 F.3d 97, 101 (2d Cir. 1994) (quoting *United States v. Bilzerian*, 926 F.2d 1285, 1294 (2d Cir. 1991)). Expert testimony that is "directed solely to lay matters which a jury is capable of understanding and deciding without the expert's help" should not be admitted. *United States v. Mulder*, 273 F.3d 91, 101 (2d Cir. 2001) (quoting *United States v. Castillo*, 924 F.2d 1227, 1232 (2d Cir. 1991)).

d. Expert Testimony Must Be Reliable

In assessing reliability, courts should consider "the

indicia of reliability identified in Rule 702, namely, (1) that the testimony is grounded on sufficient facts or data; (2) that the testimony is the product of reliable principles and methods; and (3) that the witness has applied the principles and methods reliably to the facts of the case." *Amorgianos v. Nat'l R.R. Passenger Corp.*, 303 F.3d 256, 265 (2d Cir. 2002) (citing Fed. R. Evid. 702). "Under Daubert, factors relevant to determining reliability include 'the theory's testability, the extent to which it 'has been subjected to peer review and publication,' the extent to which a technique is subject to 'standards controlling the technique's operation,' the 'known or potential rate of error,' and the 'degree of acceptance' within the 'relevant scientific community.'" *Restivo v. Hessemann*, 846 F.3d 547, 575-76 (2d Cir. 2017) (quoting *United States v. Romano*, 794 F.3d 317, 330 (2d Cir. 2015)). *Daubert* set forth a non-exhaustive list of factors that district courts may consider in gauging the reliability of scientific testimony, which include: (1) whether the theory has been tested; (2) whether the theory has been subjected to peer review and publication; (3) the known or potential rate of error and whether standards and controls exist and have been maintained with respect to the technique; and (4) the general acceptance of the methodology in the scientific community. *Daubert*, 509 U.S. at 593-95. "Whether some or all of these factors apply in a particular case depends on the facts, the

expert's particular expertise, and the subject of his testimony." *In re Fosamax Products Liab. Litig.*, 645 F. Supp. 2d 164, 173 (S.D.N.Y. 2009) (citing *Kumho Tire*, 526 U.S. at 138).

When evaluating the reliability of an expert's testimony, the court must "undertake a rigorous examination of the facts on which the expert relies, the method by which the expert draws an opinion from those facts, and how the expert applies the facts and methods to the case at hand." *Amorgianos*, 303 F.3d at 267. "In undertaking this flexible inquiry, the district court must focus on the principles and methodology employed by the expert, without regard to the conclusions the expert has reached or the district court's belief as to the correctness of those conclusions." *Id.* at 266. But as the Supreme Court has explained, "conclusions and methodology are not entirely distinct from one another," and a district court is not required to "admit opinion evidence that is connected to existing data only by the ipse dixit of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997) (citation omitted). "Thus, when an expert opinion is based on data a methodology, or studies that are simply inadequate to support the conclusions reached, *Daubert* and Rule 702 mandate the exclusion of that unreliable opinion testimony." *Amorgianos*, 303 F.3d at 266. On

the other hand, "[w]here an expert's methodology overcomes the hurdle of being based on a reliable process, remaining controversies as to the expert's methods and conclusions generally bear on the weight and credibility—but not admissibility—of the testimony." *Royal & Sun Alliance Ins. PLC v. UPS Supply Chain Solutions, Inc.*, 2011 WL 3874878, at *2 (S.D.N.Y. Aug. 31, 2011) (citation omitted).

If an expert's testimony falls within "the range where experts might reasonably differ," the duty of determining the weight and sufficiency of the evidence on which the expert relies with the jury, rather than the trial court. *Kumho Tire*, 526 U.S. at 153. "Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence." *Daubert*, 509 U.S. at 596 (citation omitted). "[T]he proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements under Rule 702 are satisfied." *United States v. Williams*, 506 F.3d 151, 160 (2d Cir. 2007) (citing *Daubert*, 509 U.S. at 593 n. 10).

Still, testimony that is admissible under Rule 702 may be excluded under Federal Rule of Evidence 403 if the court finds that "the probative value of the evidence is substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting

time, or needlessly presenting cumulative evidence." Fed. R. Evid. 403. Expert testimony is particularly susceptible to these dangers, "given to the unique weight such evidence may have in a jury's deliberations." *Nimely v. City of New York*, 414 F.3d 381, 397 (2d Cir. 2005). "Expert evidence can be both powerful and quite misleading because of the difficulty in evaluating it. Because of this risk, the judge in weighing possible prejudice against probative force under Rule 403 . . . exercises more control over experts than lay witnesses." *Daubert*, 509 U.S. at 595 (quotations omitted).

II. Discussion of Proposed Testimony from the Government Experts

a. Qualifications

The defendants do not take the position that any of the Government's proposed witnesses lack the qualifications necessary to be designated as expert witnesses. Still, I have reviewed their qualifications and believe that each is qualified to serve as an expert on the topics for which they have been designated.

B. Reliability of Experts' Testimony

The defendants have also not challenged the reliability of the Government's experts' testimony. However, concerns regarding the reliability of portions of Dr. Shelley's and Agent Hanratty's proposed testimony is an important underpinning of my decision to exclude their testimony in part,

so I am going to begin my discussion of the issue under this heading. Dr. Shelley proposes to testify regarding the "financial activities of Russian oligarchs and other wealthy Russian citizens," and will testify about the frequency with which they use certain tools to obscure their ownership of assets and the reasons why they do so. Dkt. No. 142-1 ("Expert Disclosures") at 4.

I accept that the experts have a basis to testify that some Russians engage in the conduct that they describe in their expert disclosures. However, by testifying that these are techniques used by Russians, in particular, these experts' testimony will inform the jury that when one sees these techniques in use, they are being implemented by a Russian. That testimony makes it more likely that the jury will see evidence of the use of shell companies in the ownership structures at issue in this case and conclude that—because there are shell companies—there must have been Russians involved. That makes it more likely that the jury will find that Mr. Wolfson or Mr. Kostin, both Russians, were behind these structures.

The problem with the testimony is that neither Dr. Shelley nor Agent Hanratty has provided any basis for the conclusion that the use of this type of technique to shield the ownership of assets is limited to wealthy Russians, as opposed to wealthy people of any nationality. Their testimony is that

Russians use these techniques. That implies that the use of these techniques is an indicator that a Russian was involved, but there is nothing in either expert's report that supports the conclusion that these are indicators of asset obfuscation by wealthy Russians, as opposed to by wealthy people of any other nationality. They propose to testify that the use of shell companies is indicative of Russian involvement, but there is nothing in the report that shows how it is that either expert has determined that it is distinctive of Russians in particular. They do not say that other nationalities do not do these things. And that may be the result of their dataset: these experts have seen Russians do these things because they have studied Russians. There is no basis in the expert's reports to support the conclusion that these techniques are used by only or predominantly by Russians, rather than my members of any other nationality. To support the conclusion that when you see a shell company, you know that a Russian was behind it, the experts need to give some basis to conclude that it was not a wealthy American or Brit or other nationality. There is no comparative data that permits these experts to opine that this conduct is emblematic of Russians in particular. The Government's response to the defendants' motion fails to address this problematic aspect of the proposed experts' testimony.

Similarly, these experts provide no basis in their

reports for their determinations regarding the frequency with which wealthy Russian people use the various ownership techniques that are described in their reports. For example, Dr. Shelley proposes to testify that "Russian oligarchs frequently use proxies . . . ," that "Russian oligarchs often use legal structures . . . ," and that "Typically the Russian oligarch or his family would be named . . . ." Expert Disclosures at 4. But she provides no data to support her assertions regarding the frequency with which Russian oligarchs use the various techniques. Why does she say that a particular tool is used "typically"—does that mean 50% of the time; 20%; 80%? How did she reach that conclusion, based on what data set? Because Dr. Shelley and Agent Hanratty are involved in the study of corruption and law enforcement, I can perceive a substantial issue with the data set on which their conclusions rest—namely, that they may be looking at cases that involve corruption and criminality, rather than across the universe of all wealthy Russians. Or are they assuming that all wealthy Russians are corrupt or criminal? If so, they do not describe how they reached that conclusion. With respect to Agent Hanratty of the FBI in particular, I have no basis to conclude that he has conducted any study of the behaviors of wealthy Russians or others who are not alleged to be involved in the commission of any crime.

Again, the defendants do not expressly contest the

proposed testimony of these experts based on a lack of reliability, but it's the underpinning of their 403 objection. On the face of their reports, I do not see how the experts have justified the attribution of particular ownership techniques to wealthy Russians, as opposed to wealthy people generally, or the basis for their attribution of particular frequencies by which Russians implement any one of these tools.

C. Helpfulness to The Jury

With respect to Dr. Shelley and Agent Hanratty, expert testimony regarding how wealthy people can use shell companies and other structures to obscure their ownership of assets will be helpful to the jury. This case involves the use of complicated structures used to obscure the beneficial ownership of an asset, including the use of shell companies, straw owners, and call options. The transactions involve the use of entities organized under the laws of foreign states. These are topics that are not within the ken of a lay juror. The Government presented some interesting statistics about the financial condition of the median U.S. citizen. While lawyers may have familiarity with tax structuring and indirect ownership, I think that the ordinary citizen juror would benefit from information about how such ownership structures function, and how they can be used to obscure the ownership of an asset. Such testimony will assist the trier of fact.

With respect to Mr. Santos, testimony regarding what a

sanctions program is and how it operates will also assist the trier of fact. While jurors may be aware of what a sanction is, how a sanctions program operates and can develop is outside the ken of a lay person. It will provide helpful background for the jury as they consider the issues presented in the case. Information about the operation of the sanctions program—rather than merely the output of it—is helpful because one of the issues is the alleged response to anticipated sanctions. So, some information about how sanctions programs can develop over time will help the jury understand the evidence regarding the timing of the alleged transfer of the Aspen Home.

D. Rule 403

Substantial portions of the testimony of each of Dr. Shelley, Agent Hanratty and Mr. Santos must be excluded under Rule 403. Under Rule 403, relevant evidence may be excluded if "its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." Fed R. Evid. 403.

The Second Circuit has instructed that "[d]istrict courts have broad discretion to balance probative value against possible prejudice" under Rule 403. *United States v. Bermudez*, 529 F.3d 158, 161 (2d Cir. 2008) (citation omitted). Because virtually all evidence is prejudicial to one party or another,

to justify exclusion under Rule 403, as I said earlier, the prejudice must be unfair. I refer you to my earlier comments regarding Rule 403.

Now, as to Dr. Shelley and Agent Hanratty, the testimony that wealthy Russians, as opposed to wealthy people generally, use these structures would be unduly prejudicial. As I described before, the reports do not tell me that either expert has a basis to conclude that these techniques are not used by people of other nationalities. Particularly lacking such a bridge, it would be unduly prejudicial to testify that the techniques at issue are ones that are used by Russians in particular. It would suggest the guilt of the defendants based on the nationality of Mr. Kostin and Mr. Wolfson. Here is a simplified version of the chain of reasoning that the testimony supports: shell companies are used by Russians; we see shell companies; therefore, a Russian must be involved, which makes it more likely that the Russian defendants are at fault. That string of reasoning does not have support in the experts' reports for the reasons that I described before. And, as the defendants argue, it asks the jury to make a determination based on the national origin of the defendant: People of this nationality do these things. These people are that nationality. Things done by people of that nationality are seen here. Therefore, it must have been the defendant.

The testimony as proposed is also unduly prejudicial

because it asks the jury to do what the Second Circuit prohibited in *United States v. Castillo*, 924 F.2d 1227 (2d Cir.1991). Dr. Shelley and Agent Hanratty are prepared to testify, for example, that wealthy Russian people used these techniques to avoid sanctions following Russia's invasion in Ukraine. "The government is free to offer expert testimony both as background for an offense and to assist in proving one or more elements of the offense. What the government cannot do is to ask the jury to find that because criminals of a certain type classically engage in a certain kind of behavior, the defendants engaged in that behavior." *U.S. v. Mulder*, 273 F.3d 91, 102 (2d Cir. 2001) (internal citations omitted). This is what the proposed testimony would do—tell the jury that rich Russian people hide assets to avoid sanctions and ask them to draw the conclusion that the Russian people at issue here hid assets to avoid sanctions. It is always inappropriate to propound a theory that a defendant is guilty because of the behavior of unrelated persons. See *Castillo*, 924 F.2d at 1234. The inference is particularly prejudicial in this instance because, as I have already described, there is nothing in Dr. Shelley or Agent Hanratty's reports to explain the basis for their opinions about the frequency with which Russians engage in this kind of activity. So, the Government would ask the jury to find that the defendants engaged in the charged conduct because some unspecified percentage of people with

similar demographics did so.

I conclude that any testimony from Dr. Shelley or Agent Hanratty regarding the fact that Russians in particular use these techniques to obscure ownership, wealthy Russians' motivations to obscure their ownership of assets and the frequency with which they do so would be unduly prejudicial and that the prejudicial effect of the testimony outweighs any probative value of the testimony. Those experts may testify regarding the mechanisms that can be used by wealthy people to obscure the ownership of their assets and how such structures operate, but they may not testify (1) that the conduct is particularly attributable to wealthy Russians, (2) why wealthy Russians are motivated to engage in that conduct, (3) the frequency with which wealthy Russians deploy the various tools, or (4) that the Russians engaged in this conduct to avoid sanctions.

With respect to the proposed testimony of Mr. Santos, testimony by him regarding what conduct violates IEEPA or a description of the operation of the statute is excluded. He, a nonlawyer, would be asked functionally to tell the jury what the law is and what it prohibits. That is the role of the Court. Any deviation from the charges promulgated by the Court risks juror confusion. That risk substantially outweighs the probative value of having a non-lawyer describe the requirements for compliance with the law and the executive

orders. I would not prohibit the witness from reading the text of executive orders or other documents that may be admitted into evidence, but he cannot explain what he understands them to prohibit. I will do that in my instructions to the jury. This instruction with respect to the limitations of Mr. Santos applies regardless of whether he testifies as an expert or a fact witness.

III. Discussion of Proposed Testimony from Mr. Wolfon's Expert

a. Introduction

The Government has moved to exclude the testimony of Mr. McCausland on several grounds. It contends that his expert disclosures are inadequate. The Government also asserts that the expert's testimony is not sufficiently reliable, and that it will not be helpful to the jury. I agree with the Government's assessment of Mr. McCausland's proposed testimony and am going to exclude it in its entirety.

Mr. McCausland proposes to provide three opinions: (1) that Mr. Wolfson "is not a logical selection to be a proxy or facilitator for Andrey Kostin . . ."; (2) that Mr. Wolfson's transactions "were substantive in nature and the primary payment made in 2019 was made in Wolfson's own name . . ."; and (3) that Mr. McCausland's "review of the Government's provided discovery gives no indication of payments from Wolfson to Kostin in 2019." Dkt. No. 137-1 ("McCausland Report") at 3. To

reach each of these opinions, the defendant proposes to ask Mr. McCausland to describe a narrative of information that he learned during his investigation—from unspecified sources—to support these final opinions. Mr. Wolfson has not demonstrated that any of these proposed opinions satisfies the requirements of Rule 702. I am going to discuss each of the proposed opinions in turn. Then I will discuss the Government's argument regarding the sufficiency of the defendant's disclosures.

B. Opinion that Wolfson is not a "Logical" Selection as a Proxy

The opinion that Mr. Wolfson is not a "logical" selection by Mr. Kostin to serve as his proxy is neither sufficiently reliable nor helpful. Mr. McCausland proposes to testify to his conclusion that Mr. Wolfson is not a "logical" selection to serve as a proxy. In his disclosure, he recites several facts about Mr. Wolfson and Mr. Kostin and then concludes that using Mr. Wolfson as a "nominee does not make sense." McCausland Report at 5. It would be hard to develop a clearer example of a proposed opinion that is based on the ipse dixit of the expert than this. Mr. McCausland describes no methodology that he used to reach the conclusion that this "does not make sense." He describes no means by which a person in his line of work—or any other—would evaluate whether a course of conduct would "make sense" or be "logical." There is no way to test the reliability of his methodology or

conclusion: Mr. McCausland proposes to testify that this is not logical because he is an expert, and he says that it is not. This is a classic example of the ipse dixit of an expert. Mr. McCausland's ultimate opinion that it is not "logical" for Mr. Kostin to use Mr. Wolfson as a proxy is not sufficiently reliable to be accepted.

Mr. McCausland's subsidiary opinion that "Mr. Kostin has a number of options outside of the United States, including family members, who could assist in any alleged sanctions evasions," *id.* At 6, suffers from the same lack of reliability. For example, he opines that "he believes" that high net worth individuals use only their closest and most trusted associates as nominees and facilitators. That statement is based on four itemized examples in which EU officials sanctioned family members of oligarchs. But there is no baseline for anyone to conclude that these four examples are anything more than just a curated subset of such proxy use: these are four instances in which people were caught. It says little unless we know how many other people used proxies who were not family members. Maybe the examples provided show that the use of family members is a bad idea, because they are readily caught. Mr. McCausland's opinion is based on four examples that support his view with no baseline that establishes the reliability of the data set or his conclusions from it. The same issues with Mr. McCausland's data apply to

his sourcing in paragraph 22 of his report, where he says that "multiple . . . western governmental agencies have, in recent years, cited the increasing frequency of oligarchs transferring beneficial ownership of corporate entities to their children, other family members, or close business associates." *Id.* at 6. His data does not identify the time period at issue except in the broadest of terms—in recent years—which may, or may not, be applicable here. "Increasing frequency" says little about the actual frequency—does it mean that it went from 10 a year to 100; or 5 to 6? The description of the supporting data is so vague as to be nearly meaningless.

This proposed opinion is also not helpful to the jury. Expert testimony is helpful when it "sheds light on activities not within the common knowledge of the average juror." *United States v. Wexler,* 522 F.3d 194, 204 (2d Cir. 2008). Such testimony "provide[s] the groundwork to enable the[trier of fact] to make its own informed determination[s]" on relevant issues. *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.,* 725 F.3d 65, 114 (2d Cir. 2013). So, when an expert offers his opinion, he must take care not to "usurp the role" of the trier of fact by dictating the result or otherwise straying from the proper lane of an expert witness. *Nimely,* 414 F.3d at 397; see *Mar-Can Transp. Co. v. Loc. 854 Pension Fund,* 2024 WL 1250716, at *4 (S.D.N.Y. Mar. 22, 2024).

In concrete terms, this means that "legal

conclusions," *United States v. Duncan*, 42 F.3d 97, 101 (2d Cir. 1994); "credibility" determinations; "motivations," "intentions," and other states of mind, *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 135–36 (2d Cir. 2013); and "'lay matters' which the trier of fact can understand without the expert's help" are off limits to expert witnesses, *United States v. Jiau*, 734 F.3d 147, 154 (2d Cir. 2013); accord *United States v. Zhong*, 26 F.4th 536, 555 (2d Cir. 2022).

"[E]xperts are not percipient witnesses to facts, and they cannot offer factual narratives in the form of expert opinion that would displace the role of the factfinder." *In re M/V MSC FLAMINIA*, 2017 WL 3208598, at *2 (S.D.N.Y. July 28, 2017). A party that uses an expert witness as a vehicle to "summarize the relevant facts . . . and then opine—or, more accurately, argue—that" its theory of the case is the correct one is, "in essence, giving a summation from the witness stand." *Lippe v. Bairnco Corp.*, 288 B.R. 678, 687–88 (Bankr. S.D.N.Y. 2003). However, that is counsel's job. It is "not the function of an expert witness." *Id.* at 688. Like other opinions that lack "a layer of expertise or cogent analysis beyond that which a lay jury would so clearly understand," factual narratives must be excluded. *Est. of Jaquez v. City of New York*, 104 F. Supp. 3d 414, 432 (S.D.N.Y. 2015).

The core premises of Mr. McCausland's testimony are not beyond the ken of the jury. They are, at base, simply

common-sense propositions: that someone would be expected to use someone they trust as a proxy; that someone opposed to a regime is unlikely to be the person to support it; and that a rich person at the head of a company would have a lot of contacts. His opinion based on these common sense premises that using Mr. Wolfson as a proxy would not be "logical" is not beyond the ken of a lay person. While Mr. Wolfson argues to the contrary, I agree with the Government's argument that the value of this testimony is to ascribe motive and intention to Mr. Kostin. I think that the defendant would accept that Mr. McCausland cannot testify that the Government's case is not logical. So, what is left is testimony by Mr. McCausland about Mr. Kostin's thinking process—this is opinion testimony about the motive or intent of an individual, not testimony that an expert can helpfully provide to the jury.

Mr. McCausland's proposed testimony on this topic is also inappropriate because it channels the defense's factual narrative and serves as a second closing argument. Experts can provide testimony regarding the facts upon which they rest their opinions even if they are not personally known to them. But it is apparent that the defense seeks to use Mr. McCausland to introduce facts into evidence about which he has no personal knowledge to support its factual narrative, not merely to support the proposed flawed opinions. One example of this problematic characteristic of Mr. McCausland's testimony is the

proposal that he testify at length about Mr. Wolfson's life, career, and political activism. There is no information in Mr. McCausland's report regarding how he obtained that information if not through discussions with Mr. Wolfson himself or his counsel. Without Mr. McCausland's testimony, it is unclear how that information would reach the jury. So, through Mr. McCausland, it appears, the defense seeks to introduce Mr. Wolfson's personal narrative without the need for direct testimony from Mr. Wolfson or anyone else who would be subject to cross examination. This is problematic and should not be permitted under the guise of "expert" testimony.

Because his proposed testimony simply threads facts through common sense arguments to conclude that a portion of the Government's case is not "logical," or that Mr. Kostin would not have been "logical" to act as the Government contends, this aspect of Mr. McCausland's proposed testimony acts functionally as an additional closing argument, which is not a helpful use of expert testimony.

c. The "Substantive" Nature of Mr. Wolfson's Transactions

The second set of proposed opinions by Mr. McCausland have the same flaws as the first: The defendant has not made a sufficient showing regarding the reliability of the testimony; and the testimony as proposed is not helpful to the jury.

Let me start with the second part of this proposed

opinion, namely that "the primary payment made in 2019 was made in Wolfson's own name . . . ." McCausland Report at 3. This is simply a fact, not an expert opinion. Mr. McCausland cannot provide testimony about this fact based on personal knowledge.

I agree with the Government's critique that the description of Mr. McCausland's opinion that the transaction by Mr. Wolfson was "substantive" in nature is unclear and that it is unclear what the characteristics are of a "substantive" transaction are. The more detailed description of that proposed opinion in the report describe the intended testimony in more depth. It does not provide sufficient support for the proposed opinions.

In paragraph 24, Mr. McCausland describes as a fact that Mr. Wolfson obtained a "$10 million loan from Capital Business Finance in connection with his purchase of 100% of the shares of 40 Northstar LLC." His report does not describe the documents or reporting upon which he based those underlying facts. Mr. McCausland goes on to state that "As a result of my review, I believe Capital Business Finance is primarily owned by [CC-3] . . . ." The defendant has not established that this statement of Mr. McCausland's "belief" is reliable. The report does not state what the expert reviewed to reach that conclusion. Nor is there any information regarding the process used by the expert to reach his belief based on the evidence. Again, Mr. McCausland's opinion boils down to his ipse dixit:

he looked at something, and he believes that a conclusion is correct with no explanation of the basis for the belief that can be interrogated for reliability. The defendant has not shown that this opinion is reliable.

The proposed opinions or foundations for them described in Paragraph 25 of Mr. McCausland's report suffer from the same flaws. Mr. McCausland begins by reciting a set of factual assertions for which he does not provide a foundation, but which are consistent with the Defendant's theory of the case. He then says that "My review has resulted in the following findings: a. There was no change in the ultimate beneficial ownership of the Colorado property since 2014 . .. . (b) I see no indication that Kostin benefited in any respect from any transaction made in 2019." *Id*. at 7. Again, no information regarding how Mr. McCausland reached those conclusions from the evidence presented was provided, simply that his "review has resulted in the following findings." There is no information about the process utilized to reach those findings to establish the reliability of the methodology used. Mr. McCausland believes it is sufficient to say that he has made certain findings and to ask the jury to accept them because he is an expert. This is not reliable. It is another example of the ipse dixit of an expert.

Nor is this testimony helpful. Mr. McCausland's proposed testimony supplants the role of the jury. The jury is

going to be asked to determine whether the evidence establishes whether there was a change in beneficial ownership in the property. Mr. McCausland proposes to tell them his answer based on his review of the facts; not to provide them with information or tools that will help the jury make its determination. This is not helpful to the jury—Mr. McCausland's proposed testimony supplants the role of the jury by telling them how to resolve the disputed issues, without adding anything to help them evaluate the evidence. Again, Mr. McCausland says that these are his results, because these are his results. That is not helpful.

D. Mr. McCausland's View of the Evidence

Mr. McCausland's final proposed opinion suffers from the same flaws as his earlier opinions. In his final opinion, Mr. McCausland proposes to state that in his review of the Government's discovery, he has found "no indication of payments from Wolfson to Kostin in 2019." *Id.* at 3. He also proposes to testify that he sees "no evidence that Andrey Kostin benefited in any way from repayment of the loan in 2019." *Id.* at 7.

Again, Mr. McCausland provides no explanation for how he reached his conclusions—this is again his ipse dixit; he read documents and he reached his conclusion and asks us to credit it because he is an expert.

And again, Mr. McCausland's proposed testimony is not helpful to the jury. Whether the Government has proven its case

with the evidence that it presents at trial is the question that the jury must answer. Mr. McCausland proposes to supplant their role and to say that the evidence does not show that Mr. Kostin received any benefit. This proposed use of his expert testimony is not helpful to the jury. Instead, he seeks to supplant the role of the jury.

The proposed testimony is more problematic because the proposal that Mr. McCausland testify about the universe of the materials collected by the Government throughout the course of the investigation is a not-very-thinly veiled attack on the Government's investigation itself. The Government's investigation is not on trial. Having a former senior FBI agent testify that he thinks that the Government does not have a case based on evidence that has not been presented to the jury has very little probative value. On the other hand, it is extremely confusing and unfairly prejudicial. Those adverse characteristics substantially outweigh any probative value and thus, such evidence should be excluded under rule 403.

E. Sufficiency of Defendant's Notice

I agree with the Government's view that the expert notice provided for Mr. McCausland is inadequate. As amended in 2022, Federal Rule of Criminal Procedure 16(b)(1)(C) requires a defendant to disclose certain information in writing "for any testimony that the defendant intends to use at trial under Federal Rule of Evidence 702, 703, or 705 during the

defendant's case-in-chief at trial . . . ." Fed. R. Crim. P. 16(b)(1)(C)(i). In particular, "[t]he disclosure for each expert witness must contain," inter alia, "a complete statement of all opinions that the defendant will elicit from the witness in its case-in-chief" and "the bases and reasons for" each of those opinions. Rule 16(b)(1)(C)(iii). Mr. McCausland's disclosure fails to provide "the bases and reasons for" his opinions.

I agree with the Government's arguments regarding the insufficiency of Mr. McCausland's disclosures generally, and I adopt them here. I end with the notice issue because I think that the issues with Mr. McCausland's notice are tied to the flaws with his opinions that I described earlier when I discussed the absence of a showing regarding their reliability. Mr. McCausland says what his opinion is, but he never says how he arrived at them, or what the process or methodology was to arrive at his conclusion. His opinions are flawed ipse dixit statements. I do not have a basis to conclude that there is any methodology behind his flat assertions of his beliefs. That may be why the defendant thinks that the disclosure is adequate: There is no more detailed explanation of the bases for Mr. McCausland's opinion to provide. But the lack of any explanation for the reasoning process that led to his conclusions is what makes his notice deficient.

The notice is also deficient because it does not

include a sufficient description of the factual predicate upon which Mr. McCausland's opinions purport to rely. Just as two examples among many: we do not know how he learned all the details of Mr. Wolfson's life about which he intends to testify. Nor do we do know what records he reviewed to reach his opinions regarding Mr. Kostin's network and family members. His report does not set forth the predicates for the information that he wishes to present to the jury as the basis for his opinions. By failing to provide sufficient information regarding the factual predicates for his opinion testimony, his report again fails to provide a sufficient description of the bases for his opinions.

IV. Conclusion

For the foregoing reasons, Defendants' motion in limine to exclude the testimony of the government's expert witnesses is granted in part and denied in part. The government's motion to exclude the testimony of Mr. Wolfson's expert witness is granted.

So thank you so much for all of your time during the course of today's proceeding. Counsel, I don't know what else there is for us to talk about. Two things I want to talk about, I guess, briefly are two issues that I teased in my suppression decision, which relate to the privilege issue in particular. And also, I note that the government has recently -- will have completed its 404(b) disclosures. I

don't know to what extent either of those matters is going to again provoke more issues for the Court to resolve prior to trial. So I just wanted to ask what your views are so that I can set in place a framework for the resolution of any anticipated or potential issues regarding those matters.

Counsel for the government, what do you think?

MS. DEININGER: Your Honor, we produced a list of anticipated exhibits last Monday, which included a list of all of the materials we are currently planning on that were received from the Cyprus law firm that was the subject of the privilege motion. We do not believe that any of those materials contain any attorney/client privilege material and defense has raised no issue to us.

THE COURT: Thank you. Fine.

So counsel for Defendant, anything you want to raise on that point?

MR. RYBICKI: Yes, your Honor. And with respect to your Honor's rulings as well, we would like to make a statement. But with respect to the privilege issue, the government did produce voluminous exhibits. We are still going through those. There are many hundreds, and we have not been able to make an evaluation as to whether any of the privileged issues are implicated.

THE COURT: Thank you. That's fine. I do want to set a schedule to the extent that there are any issues that are

going to be presented to the Court for resolution while we adjourn the trial for the reasons that we discussed. We should not use this time in a way that would lead us to an inefficient trial process. So I do want to propose that we set a deadline for submission of any motion with respect to those documents. As I said, I teased in my suppression motion that those determinations need to be made on a document-by-document and fact-based basis.

So counsel for Defendant, I appreciate that you are still going through the exhibits. By when will you know and be able to present any issues regarding those on the basis of privilege? And I will just bundle this with any potential 404(b) issues. By when will you know those things?

MR. RYBICKI: Your Honor, we would ask for four weeks.

THE COURT: Thank you.

Mr. Bond, what does Mr. Bond's counsel think?

MR. KOUSOUROS: We would concur with that, Judge.

THE COURT: Thank you.

Counsel for the United States, how long do you think you would need in order to respond to any briefing on that question?

MS. DEININGER: Your Honor, not knowing exactly the scope of what they are going to object to, we would ask for two weeks, if they are taking four weeks to make that determination.

THE COURT: Thank you. I will require that any briefing on these issues be due three weeks from now. Any opposition will be due two weeks thereafter. Any reply would be due a week after that. I need to keep the briefing a little tighter than was suggested by the defendant in order to make sure that I have enough time to review and resolve these motions before trial.

Counsel, for Defendant you wanted to make a comment?

MR. RYBICKI: Yes, your Honor. I would like to begin by thanking the Court for its exhaustive opinions related to the expert issues. We would respectfully ask for leave of Court to supplement Mr. McCausland's expert report. There is -- we can clarify the -- first, I would like to say that the government has requested supplementation under Rule 16 for the bases and reasons for Mr. McCausland's opinions. We have provided such information several weeks ago, including a long list of Bates numbered documents and other sources for the conclusions that Mr. McCausland arrived at in his report.

We would also respectfully request leave of Court to supplement the methodology that Mr. McCausland used, as well as clarify to the Court the fact that additional fact witnesses that Mr. Wolfson intends to produce at trial will form, in part, the bases for some of the factual issues that are discussed in the report and the analytical framework that Mr. McCausland applied to those facts.

THE COURT: Thank you. That's fine. I would be happy to allow supplement -- let me say a couple of things. First, as you know, the party advancing an expert bears the burden of showing the admissibility of the expert's testimony under *Daubert*.

Second, my rulings today are based on what's been presented to me to date. I am not concluding that there is no potential basis upon which the defense might be able to supplement the expert's report or provide testimony at a *Daubert* hearing that would provide me with adequate support in order to reach this conclusion. Any supplemental submissions to the Court would need to address the issues that I mentioned. There are, I will say, concerns about the nature of his testimony, particularly the opinion that something is logical or does not make sense. These are hardly, I will call it, scientific terms. But I am happy to give the defense another opportunity to present additional evidence to support the proposed testimony. But as to this too, I would also need to set a schedule to allow the parties to fully resolve the issue before the trial.

So counsel for Defendant, what's your proposal?

MR. RYBICKI: We would suggest the same schedule as for the privilege documents, your Honor; three weeks, two weeks, and one week for replies.

THE COURT: Thank you.

Counsel for the government?

MS. DEININGER: Your Honor, that's fine with us. The government also wants to take the time to review its own expert opinions and see if it feels that it's going to try to supplement under the same time schedule.

THE COURT: Thank you. That's fine. I will permit the parties to do that with respect to each of your respective experts on the schedule that we have just discussed. Good.

Anything else that any party would like to raise with the Court? First, counsel for the government.

MS. DEININGER: Just briefly, your Honor.

THE COURT: Please.

MS. DEININGER: Your Honor had set a deadline for reciprocal discovery by the defendants to be produced to the government by last Monday, the 26th. I just want to state for the record that we did not receive anything besides the small subset of materials that were produced to us in connection with a supplemental disclosure for Mr. McCausland, which contained publicly-available -- generally publicly-available links to websites.

Also, the parties had agreed to exchange Rule 3500 and Rule 26.2 materials yesterday. Although we understood that trial was likely to get adjourned for at least some period of time, defense counsel asked that we still produce our Rule 3500 materials, and we did so on an "attorney's possession only"

basis. So I just want to state for the record that we did not receive any Rule 26.2 materials.

THE COURT: Thank you.

Counsel for each of the defendants, let me hear from you about the status of your reciprocal productions to the government.

MR. RYBICKI: Yes, your Honor. We have no supplemental discovery to produce at this time, nor do we have any 26.2 or 3500 material to produce.

THE COURT: Thank you.

Counsel for Mr. Bond.

MR. KOUSOUROS: Same with us, your Honor.

THE COURT: Thank you.

MS. DEININGER: Your Honor, I would just note that that may very well be true, but in my experience, it is very unusual not to have any Rule 26.2 materials, at least for an expert witness.

THE COURT: Thank you.

Counsel for each of the defendants, any response?

Counsel first for Mr. Wolfson.

MR. RYBICKI: We will certainly confirm that that's the fact, your Honor, but my belief now is that we have none.

THE COURT: Thank you.

MR. KOUSOUROS: We have not served expert notice.

THE COURT: Thank you. Fine. So I accept the

defendants' counsels' proffer. Counsel, I accept your proffer.

Counsel for the government, anything else that you would like to raise?

MS. DEININGER: No, your Honor.

THE COURT: Thank you.

Counsel for Mr. Wolfson, anything that you would like to raise with the Court?

MR. RYBICKI: No.

THE COURT: Thank you.

Counsel for Mr. Bond?

MR. KOUSOUROS: Nothing from us. Thank you very much.

THE COURT: Thank you all for your time. This proceeding is adjourned.

(Adjourned)